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The American Political Science Review

Vol. XVIII FEBRUARY, 1924 No. 1

RECENT POLITICAL DEVELOPMENTS: PROGRESS OR CHANGE?[1]

HARRY A. GARFIELD

Williams College

It used to be said by a certain learned professor opposed to departure from old and familiar paths, "Gentlemen, all progress is change, but not all change is progress."

In every department of human affairs, in every quarter of the civilized world, the contrast between conditions in the late eighties and the present time is amazing—not conditions only but the difference in attitudes, in beliefs, in human relations. We may well ask ourselves, Whither? Certainly it is incumbent upon us to consider the character of these changes—whether they are making for progress—and what steps we are taking or can take to meet them. I ask you to consider with me two aspects of this question, one affecting industrial and the other international relations. In each case the proposals heretofore offered to meet the situation appear to fall into one of two categories, the first mechanistic, the second educative; the first, an attempt to meet a new situation by introducing new devices of control; the second by a process of education to modify or change men's attitude and belief. In the first category fall

[1] Presidential address delivered before the American Political Science Association at Columbus, O., December 27, 1923.

most legislative enactments such as the direct primary laws, the Transportation Act of 1920, the International Postal Union, and the Treaty of Versailles. In the second category would be included the American Federation of Labor, the Chamber of Commerce of the United States, the British Imperial Conference, and the Conference of governors of our several states. One has only to examine a list of bills introduced during a session of our national Congress or of the legislature of any particular state to appreciate the number and scope of proposals, most of which belong to the first category, or to run over the list of associations, brotherhoods, fraternal organizations, movements of various sorts, to realize the extent of the second class of undertakings.

Mechanism is static. It is familiar knowledge that people cannot be made moral by legislation. On the other hand motives, attitudes of mind, beliefs, by themselves are as futile as escaping steam. These observations need only to be stated; the least experience convinces us of their truth. Yet strangely enough each new proposal, whether it be mechanistic or educative, raises up groups of followers, greater in number and more potent for good or ill when conditions are menacing, and almost unnoticed when all goes well with the world. In times like the present we are apt to throw over the well-tried for the untried and, reversing Hamlet, exchange the ills we have for those we know not of. Often there lie about us neglected or unperceived opportunities—unused machinery, untried experiments in human relationships—which being put to the test may be found quite equal to the emergency. It is my purpose to examine one such opportunity, partly educative and partly mechanistic, experimented with more or less for many years, the possibilities of which have not been clearly perceived. I mean the principle of the advisory relation and the machinery of the advisory commission.

By the principle of the advisory relation is meant recognition by a duly authorized representative of his right and duty to turn for advice to definitely designated persons, while retaining undisturbed the duty to exercise powers committed to him by existing law. It is the principle which found expression in the *amicus curiae*. No change in the constitution or powers of the

court took place but the judge could, when he wished, call in one learned in the law to advise him as a friend of the court. The principle of the advisory relation has been recognized ever since Moses took counsel of Jethro and doubtless for unrecorded ages before that. But we have not fully utilized it, nor has the machinery of the advisory commission been supplemented by a fact-finding agency, as ought always to be the case. Even where the principle has been applied there has existed a certain jealousy on the part of the duly constituted representatives of government, especially in cases of legally authorized advisory commissions, lest the rights and powers of the representative be curtailed or at least encroached upon by advisers whom he regards as irresponsible.

In the early days of the republic, when conditions and human relations were comparatively simple, it was doubtless true that our chosen representatives knew at least as much concerning conditions and the needs of people and groups of people as did the best informed citizen. But today, who will dare to boast that he knows all the factors of an industrial or international situation, or is wise enough, unaided, to cope with the problems presented! When the Constitution of the United States was framed, the principle of representative government adequately met the situation. The residents of a congressional district were farmers, mechanics, trades-people, and a few ministers, doctors, and lawyers. Today in most districts another person stands in their midst, superior in power to any individual. I mean the artificial person known as the corporation, endowed with perpetual life, and free from unlimited liability, giant progeny of politico-economic origin. But let me hasten to say that I would neither destroy the giant nor refuse to recognize his place in the industrial world. Alongside of this new person, member of our body politic, is the labor union, organized otherwise, but as powerful as the corporation. Its strength lies in its strong arms and voting power. The effectiveness of the corporation and of the labor union is derived from the concentration of power in a few hands. The menace of each is that this extraordinary power may be directed against the public welfare, that in the industrial warfare

waged between these two giants of industry a helpless public may be made the innocent victim.

Whether one views this situation from the viewpoint of corporate or trade-union interest, or of the public, it is obvious that rights are involved and that the rights of these three parties in interest are in certain respects in conflict. This gives no occasion for alarm but it does present a situation with which we must deal. Representative government was introduced as a means of overcoming difficulties that arise from conflicts of interest. The question now is whether the present conflict between forces, two of which have risen to positions of power within the last fifty years, can be composed by this familiar machinery of government. Representative institutions, being based upon the selection of individuals by individuals, can be made to apply by treating the corporation and the labor union, or other similar organization, as individuals, and giving them representation in our scheme of government. This plan is familiar to the financial and industrial world, but the suggestion that it be extended to the political field would be regarded at least with suspicion. No one, so far as I know, has ever been elected to public office as an avowed representative of financial, industrial, or commercial organizations, whether on the side of capital or of labor, and no one has seriously proposed that the franchise be conferred upon these artificial persons. Yet questions constantly arise which require careful consideration of these group interests. The corporation and the labor union have made themselves heard only by indirection, and sometimes the indirect method has been discreditable. So long as either group is represented openly by attorneys or other agents there can be no just cause for complaint. A railroad corporation or a labor union possesses rights which must be explained if legislation affecting them is to be wisely drafted. These groups cannot be justly assailed for making the necessary representations, but exception can and ought to be taken to all indirect methods and undue influence, and when this indirection is engineered by a great and powerful group our institutions are imperilled.

If then it is granted that these artificial persons have a proper and useful place in the body politic, that they are entitled to be heard, but that their voice may be raised and their influence exerted only in open forum, we must discover a method or a mechanism by which this may be brought about. The result can, I think, be accomplished simply and without disturbing the existing machinery of government. Even if it were seriously proposed it is unnecessary to provide for direct representation of groups or classes.

The representatives of financial, commercial, and industrial groups are the best qualified to supply facts and furnish expert opinion. They may also profitably discuss, but may not wisely be permitted to determine, policies of government affecting their interests. The underlying reason is not different from that unhesitatingly applied to our courts and indeed to the legislative and executive branches of government. When his individual interest is involved, the judge does not sit in the case, and the scrupulous legislator and administrator refuses to act. Officials charged with the responsibility of drafting or executing the laws need to know the facts involved and to understand thoroughly the situation with which they are dealing. On the other hand, the representatives of group interests need to be assured of opportunity to present the facts as they know them and to discuss the relation of their interests to the general or to conflicting interests.

Attempts have been made to meet these needs by calling representatives of various industrial groups before committees of the Congress, and by the appointment of commissions empowered to make examinations and report findings. An investigation of the composition and powers of these commissions will reveal the direction in which we are moving. This examination will also show the strength and weakness of the advisory method in so far as it has been applied. To forecast conclusions, the method is strong and the results fruitful when it is based upon a trustworthy investigation of conditions and needs of all interested parties. In other words, a fact-finding agency is an essential and prerequisite part of an advisory commission. Before discussing this conclusion in more detail I shall examine briefly a few in-

stances of resort to the advisory method illustrative of recent political developments and at the same time exposing the weakness of the method as thus far applied.

It may be helpful to consider in the first place a typical instance of the way in which our national government sought the advice and coöperation of industry during the World War. As intimated above, industry has always been wary of governmental interference. This is equally true of capital and of labor. When a controversy arises between the two it has been assumed, at any rate until recent years, that this was a private affair to be adjusted between the two groups immediately concerned. But the war made it abundantly evident that the consumer is an interested party. In some instances, certainly, the public had a very vital interest in the outcome. Coal, for example, was not only necessary for the conduct of the war but also for the well-being of the civil population. We needed all the coal that could be produced. Therefore, strikes could not be tolerated as a means of adjusting wage differences or other controversies between capital and labor. To meet this situation the United States fuel administrator called to his aid, as a permanent part of his office force, experienced operators and mine-workers. Under the law and by virtue of his appointment he was charged with the task, among other things, of adjusting prices. This power could not be delegated, but the fuel administrator never exercised it without first calling for facts and figures from a committee of experienced mining engineers, employing experts of the federal trade commission, and for the advice of the operators and mine-workers constituting part of his office force. Power and authority were exercised as provided by law, but they were exercised in the light of facts found by experts and of opinions submitted by representatives of the parties in interest acting in an advisory capacity. As a result of their experience, it became clear to the operators, mine-workers, and officials connected with the fuel administration that a principle of first-rate importance to the conduct of public business had been developed. The principle was that the determination of facts and the formulation of policy are two separate functions and should not be performed

by the same agency, and that a body advisory to the policy determining agency should not be clothed with power.

Under our system of government public officials are chosen by the people to determine matters of public policy and they may not delegate the duty. One of the characteristics of bureaucratic government is that the fact-finding function and the policy-determining function are exercised by the same official.

A second instance of resort to the advisory method, this time purely in the field of politics, is the Governors' Conference. The first meeting of this kind was called by President Roosevelt in May, 1908. A question of first-rate importance had arisen. Gifford Pinchot, then chief of the forestry bureau, had directed attention to the uneconomic treatment and serious waste of our national resources. The people of the United States were not prepared to take the long view. Our national resources seemed to be limitless. The warning "Be wise in time" fell on deaf ears. A bill had been introduced in Congress seeking to protect the forests of the Appalachians and the White Mountains. But it aroused no interest. The constitutionality of the bill was questioned and this furnished sufficient excuse to members of Congress unwilling to inaugurate a program of conservation. Thereupon, President Roosevelt summoned the governors. Every state was represented, and in addition to the public officials there were present a group of leading men of affairs, including Andrew Carnegie, James J. Hill, and John Mitchell, and a group of educators,—Alderman of Virginia, Angell of Michigan, Hadley of Yale, James of Illinois, Northrop of Minnesota, Remsen of Johns Hopkins, and Van Hise of Wisconsin. The action of the President in summoning the governors was widely commended and there was unanimity of sentiment as to the need of initiating a program of conservation. The closing words of James J. Hill were significant. The conference, he said, would "give new meaning to our future and new lustre to the idea of a Republic of living federated states: Shape anew the fortunes of this country, and enlarge the borders of hope for all mankind."

It is to be noted that the conference of governors was and has continued to be purely advisory, and that with rare exception no

vote has been taken upon any of the questions presented. It will be recalled that at the preliminary meeting of the recent conference held in West Baden, Indiana, much heat was engendered by the adoption of a resolution which went no further than to express the opinion of the assembled governors, and that at the Washington Conference the six points of the program presented by the President, looking to the enforcement of the Eighteenth Amendment, and the seventh, suggested by Governor Preuss of Minnesota, constituted a program acceptable to the governors rather than adopted by vote of the body. The advisory character of the conference of governors is evidently to be jealously preserved.

The notion that the function of a conference is to pave the way for a vote by the conferees is so fixed in the minds of many people that nothing seems to be accomplished by mere exchange of ideas. This is strange when one stops to think of it, because the process constitutes a large part of the educational method. The explanation, is, I suppose, that education is erroneously regarded as complete with the conferring of degrees—the intellectual laying on of hands, and not to be confused with the practicality of living and governing. We need not be surprised, therefore, to find a considerable body of highly respectable opinion doubtful of the value of the Conference of Governors. One of our leading papers in 1913 had this to say of the assembly, "First it was the 'House of Governors,' then the 'Conference of Governors,' and now it is merely a few governors hearing themselves talk."

Several things should be noted in passing. The first two conferences met at Washington. A single question of policy had been discussed. At the second conference the subject was the desirability of uniformity of legislation. Thereafter the conferences became peripatetic, the third meeting at Frankfort, Ky., the fourth at Spring Lake, N. J., the fifth at Richmond, Va., the sixth at Colorado Springs, Colo., the seventh at Madison, Wis., the eighth at Boston, and so on until 1922. The first had been called by the President of the United States, seeking the advice and coöperation of the governors. The later conferences came together, not to advise the President, but to discuss questions of

common interest among the states. The programs became diffuse and to an extent justified the newspaper comment above quoted. A direct result of the Conference of 1908 was to educate public opinion and to put it squarely behind the President, with the result that our public domain has been vastly increased and enriched. A program of conservation has been accepted and substantial progress made, of utmost importance to our future welfare. The desirability of uniformity of legislation between the several states, discussed at the Washington Conference in 1910, contributed to clarity of view, though we are still far from appreciating the proper limits of federal action and the principle which ought to govern in reserving certain matters to the several states. The Washington Conference of Governors and Mayors, called by President Wilson in 1919, though marred by political controversies springing up after the World War, was helpful. The conference called by President Coolidge last October was at once reflected in the stand taken by the governors of several important states, rendering more effective the enforcement of the Volstead Act.

In estimating the value of these conferences a distinction should be made between the two types of meeting, the one called by the President for advice, the other a meeting of governors for conference. The latter are meetings of equals for the purpose of exchanging views, whereas when the President invites the governors to Washington he does so as chief magistrate of the United States, charged with the exercise of public duties of the most important character. With the increasing complexity of functions which our President must perform it is of first importance that he be able to call upon the governors of the several states, whenever he deems it advisable, not only to assist him in reaching wise conclusions but, what is of equal importance, to carry over to the general public the questions under consideration. The weakness of the conferences called by the President is due to lack of sufficient data prepared well in advance by a permanent fact-finding agency or secretariat.

Another valuable experiment with the advisory method is found in the development of the conference of British colonial ministers, now known as the Imperial Conference. The changes

which have taken place in the relations between the mother-country and the colonies since 1887 are important not only to the British Empire but to the rest of the world. One is sorely tempted to deal with the substance rather than the machinery of them. They deserve wider treatment than they have received in the United States. In spite of the World War we are still provincially minded toward international affairs, particularly in that great and fertile region of our country, known as the Middle West, teeming with life and enterprise and much that is admirable, especially in the eyes of those of us who claim it as our birthplace. But I must leave the substance of these changes to another occasion, dealing with them only as they are revealed in an examination of the organization and powers of the Imperial Conference recently closed.

The first Conference was held in London in 1887 in connection with the jubilee of Queen Victoria; the second, that of 1902, in connection with the coronation of Edward VII. In 1907 the conference was called primarily for the transaction of business. The discussions concerning it in the current magazines of that year give one a clear notion of the progress which had been made during the twenty years since the first conference. The United Kingdom was still the supreme ruler of perhaps 350 million people, but it was recognized and indeed commented upon by students of imperial relations that quite possibly the self-governing dominions might in the future outrank in population and wealth the United Kingdom and the autocratically ruled parts of the Empire. As a writer in the *Quarterly Review* of April of that year said. "The potentialities of Canada are immense and so, though probably in a less degree, are those of Australia and South Africa." He complains that the inhabitant of the United Kingdom still regards the colonies as more or less flourishing states of his own, and that the real object of the Conference was to find means for making the several governments work more and more in unison.

Lord Elgin arranged the agenda for the Conference of 1907 and he gave first place to the question of "The Constitution of the Conferences." Even the question of name became important. As this writer declares, "The Canadian Government vigorously

rejected the title of Council though they accepted the epithet of 'Imperial'." Australia, on the other hand, deemed it desirable to establish an Imperial Council consisting of representatives of Great Britain and the self-governing colonies, chosen *ex officio* from their existing administrations and proposed "That the objects of such Council shall be to discuss at regular conferences matters of common imperial interest, and to establish a system by which members of the Council shall be kept informed during the periods between the conferences."

In an article on Imperial Unity and Colonial Conferences, in the *Quarterly Review* of January, 1907, we read that Mr. Chamberlain "made some attempt at the Conference of 1902 to recommend the formation of a 'real Council of the Empire' which might at first be advisory merely but eventually be clothed with 'executive functions and perhaps also legislative powers,' but he found that the leading colonial representatives were not prepared to move one step in this direction." The proposals of Sir Frederick Pollock, dealing with the machinery of the Conference, indicate clearly that up to that time the functions of the Imperial Conferences were, in his mind at least, advisory and that a secretariat sitting continually should constitute a sort of fact-finding body, charged with responsibility to collect data for the discussion of the Conference at its sessions.

Mr. Buchan, writing in *The Empire and the Century*, describes Sir Frederick's proposal as "(1) an Imperial Cabinet, consisting, to begin with, of the British Cabinet enlarged by Colonial Premiers, and meeting at stated times in an Imperial session; (2) an Imperial Committee of the Privy Council, advisory in its functions, and sitting more or less continuously. This in turn would be fed by (3) an Imperial Commission, or Intelligence Department organized on a broad basis, and directed by a permanent secretary."

But the most important document for our purposes was the encyclical despatch addressed by Mr. Lyttleton in the name of His Majesty's government to the self-governing colonies on April 20, 1905, and published with the replies received at the end of November. The despatch traces the development of the

Imperial Conference from its first meeting in 1887, showing that it had developed by a natural process, suggesting that the name "Imperial Council" should be used instead of the name "Colonial Conference," and that there should be a permanent commission appointed and paid by the United Kingdom and other states taking part in the Conference, to investigate facts and make recommendations concerning policy on matters referred to it by the Council.

One sees that the value of fact-finding bodies and the advisory method was understood, and by some at least accepted as a valuable addition to parliamentary method. The self-governing colonies demanded power. The Foreign Office was not disposed to yield control of foregin affairs. It is unnecessary here to do more than point out that the six conferences held since 1907 have been advisory in character and that the British, much more clearly than we, appreciate the association of a permanent secretariat or intelligence bureau with and as part of an advisory body.

To return now to the consideration of fact-finding and advisory bodies as instruments suited to the political developments of recent years. On what lines should they be constituted, and what should be their functions? That is to say, (1) to what situations may they be properly and usefully applied, (2) to whom should they be responsible, and (3) with what specific powers should they be invested?

Concerning the first, it is obvious from the illustrations above cited that they may be at least usefully employed in certain industries and in meeting new political problems. Confining attention for the moment to their application to industrial problems it will be recalled that, from the dawn of history, food, clothing, and shelter have been recognized under the law as necessaries. In modern times we have added two others, fuel and transportation, and perhaps to these should be added means of communication.

The World War left little doubt in anybody's mind that these are necessary to human welfare and the preservation of our civilization. Sooner or later it will be common knowledge and

the common law will recognize—if it does not now recognize—that fuel and transportation must be included among necessaries, and that industries engaged in their production and distribution are charged with a public interest. Nice questions will, of course, arise. For example, granting that coal is a basic necessity and the industry charged with a public interest, does it follow that the industry producing coal-mining machinery should be included? The question is difficult but not insoluble. Before we can come to clearness of opinion education is necessary and it is here that the advisory relation, and fact-finding and advisory bodies play their important part.

Every student of legislation accepts as fundamental the statement that a statute may not wisely be placed upon the books until the great majority of the public perceive the necessity for it. Until that time much unwise legislative tinkering can be saved by resort to the advisory method in studying the question. Until there is a clear understanding of the essential difference between basic and other industries much harm may be done in attempting by law to impose advisory relations upon unwilling and non-essential industries—non-essential, that is, to the production of basic commodities. In a sense all industries are basic, as we discovered during the war. But a few only are essential to the production and distribution of material necessary to basic commodities. Fact-finding and advisory bodies may be wisely set up in any industry, but they should be purely voluntary and without dictation of government in any industry not charged with a public interest.

To pass to the question of the composition of fact-finding and advisory commissions, we are at once faced with the question of responsibility—responsibility in its technical, political sense. The value, to say nothing of the success of fact-finding and advisory bodies, requires the presence of representatives of all the parties in interest. It is of fundamental importance that the spokesman for each group or party in interest be chosen by and be responsible to his group. If, for example, an advisory commission were set up in the bituminous coal industry and the secretary of commerce, by direction of the President, representing

the public, were authorized to act as chairman of an advisory commission, it would be a mistake of first importance, if the President were also given power to appoint representatives of the operators and of the mine-workers, the other two parties in interest. The operators, through some form of association, should choose their own representatives and the mine-workers likewise should choose theirs. The difficulty with this proposition in the minds of many people is that it assumes, nay necessitates, the existence of a miners' union. But are we warranted in denying to the mine-workers the right to organize while asserting the right on the part of capital? The principle of equality before the law demands that the workers may organize as well as the capitalists and it is neither fair competition nor good economics to insist that organized capital shall be permitted to exclude organized labor and deal only with the individual.

Let us assume then an advisory commission composed of the secretary of commerce, acting as chairman, and say three representatives chosen by the operators and three by the mine-workers. This commission of seven would represent all the parties in interest,—the public, the mine-workers, and the operators. If an office were established for the commission in the office building of the secretary of commerce so that he could at all times and immediately summon the other members of the commission to a conference, and if they in turn were at all times free to approach the secretary, laying before him complaints or suggestions, it is obvious that the President and Congress, acting for the public, would at all times have at hand experienced and practical advisers in determining questions of policy affecting the bituminous coal industry. Public officials charged with the performance of duties in respect to the industry would be well-informed, and both branches of the industry would have immediate and direct access to those who have it in their power to make or mar their industry. There can be little doubt that if such a body were set up in the way indicated misunderstanding and friction, leading to total or partial suspension of production, would be in most cases avoided.

But with what specific powers should such a commission be invested? Flatly and firmly it should be stated that these commissions should be clothed with advisory powers only. They should neither be given the task of finding the facts nor permitted to determine the policy.

It has been suggested that such bodies would invariably seek to extend their powers. But we have no experience with such bodies in dealing with industrial problems. By the act creating them, we have invariably clothed commissions with administrative and judicial as well as with advisory powers. If we have asked a commission to find the facts we have also given it power to determine a policy or at least to recommend a course of action. We shall not fully understand the purpose and scope of the advisory relation and commission until we perceive that its functions are limited strictly to advice. The fact-finding, the advisory, and the policy-determining functions are three different functions, and the agencies charged with the one must not be permitted to exercise either of the others. The three functions are as separate and distinct as those of the auditor who examines the books of the corporation, the superintendent who advises the management, and the officers of the company who determine the policy.

I am satisfied that the most helpful move that could be made at the present moment in regulating the coal industry would be for Congress to authorize the appointment by the President of a permanent fact-finding commission, operating continuously, whose sole duty should be to inquire into the cost of production and distribution, the wages and profits of the industry. If nothing else were done, this would constitute a great step forward. But the next step is equal in importance with the first, namely, that the President be likewise authorized to set up advisory commissions, one for the anthracite industry and another for the bituminous coal industry, each constituted as above indicated and each limited strictly to the exercise of advisory powers, using data furnished by the fact-finding commission and upon the practical experience of its members in interpreting the facts found.

It will be observed that the legislative and executive powers of government would remain exactly where they are at present. The proposal merely furnishes a trustworthy method of finding facts and of furnishing expert opinion for the use of all parties.

The application of the advisory principle and machinery to the solution of international problems can be dealt with briefly. The conditions are not fundamentally different from those underlying industrial problems. When the soldiers stopped fighting, the politicians began. The battle is less bloody but it is also less edifying. Selfish national interest and pride displace international coöperation, and the only hope of reconciliation lies in first ascertaining the facts, understanding the traditions, needs and aspirations of opposing nations, and second in determining the policy to be pursued in the interest of humanity and civilization. The interests which divide nations can be settled and the powers coördinated by the application of the advisory method and the establishment of fact-finding and advisory bodies. The secretariat of the League of Nations and the International Labor Office at Geneva are two great international fact-finding agencies. No one who has visited them and observed the results of their labors would think of dispensing with them unless—to use one of President Roosevelt's expressions—he were moved by "weasel words". These international agencies are, moreover, as essential to the preservation of facts of international importance as the recording offices of our counties are necessary to the preservation of wills and conveyances. After the facts have been found it is necessary that they be weighed and sifted by a body of international experts, capable of advising governments charged with the responsibility of formulating and carrying out policies. It is unnecessary to disturb existing constitutions. We need not modify any fundamental principle to set up this international advisory commission, call it by what name you will.

To adopt this policy and set up these commissions, whether in industry or in international affairs, will make for progress almost without change. We have been heading toward that goal from the beginning. Experience ought to have been a better teacher,

but now at last our eyes are open to the fact that not only the safety of the republic but the preservation of our menaced civilization depends upon the adoption of some such machinery, backed and supported by informed and enlightened public opinion.

Which shall it be, the destructive change of revolution, instant or prolonged, by force of arms and wreck of constitutions, or orderly progress by use of a neglected opportunity lying at our very doors, available on the instant almost without change of cherished institutions? The advisory relation lies at the very root of our civilization. From most ancient times we hear the call, "Come let us reason together!" It is the first fruit of the Christian ethic. It flows from the teaching of the Master as rivers flow from their sources to the sea.

THE MISSOURI CONSTITUTIONAL CONVENTION

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Under the provisions of a constitutional amendment adopted in November, 1920, the voters of Missouri, at a special election in August, 1921, approved the plan for a constitutional convention, to consist of two delegates from each of the 34 senatorial districts and 15 delegates elected at large. In order to secure representation from different political parties the amendment restricted each party to the nomination of one candidate for delegate in each senatorial district. The state committees of the two major political parties agreed also to the nomination by each of seven candidates for delegates-at-large, and jointly nominated a candidate for the fifteenth delegate-at-large, so that the convention was bipartisan in its membership. This arrangement prevented the consideration of questions involving party differences, except in one case where agreement was secured upon a compromise plan.

The convention met on May 16, 1922 and adjourned *sine die* on November 6, 1923, after having been in session 267 working days. On account of the session of the legislature a recess was taken from December 15, 1922 to April 16, 1923. The convention continued to meet until September 7, 1923, when another recess was taken to enable the committees on phraseology and arrangement, submission and address, and others to complete their reports. The convention reassembled on October 2, 1923 and completed its work on October 5. In order to provide for any contingency that might arise it was decided to reconvene on November 6, with the understanding that the president and secretary with such delegates as might be present could declare the convention finally adjourned.

Before the first recess the activities of the convention may be divided into two periods. During the first of these the attention of the members was devoted almost exclusively to the 329 proposals for changes that were submitted and to work on the committees to which these proposals were referred for consideration. During the second period the reports of the committees were debated and amended in the committee of the whole and finally adopted by the convention.

Nineteen standing committees were provided, of which fifteen were revising committees to which the numerous proposals were referred. Naturally there was little for the convention to do as a body until the committees commenced to submit their reports. Public hearings were held in all cases where the desire for an opportunity to be heard was manifested, and these hearings in the case of important committees occupied much of the time of the members. The first two committee reports were submitted on July 20. One additional report was submitted in July, two in August, five in September, three in October, and one in December. One committee had not filed its report when the convention adjourned for the recess on December 15.

The convention commenced its consideration of the committee reports in committee of the whole on August 9. From that date it was continuously engaged in debating these reports, adopting amendments and perfecting the provisions that had been submitted. The published debates are illuminating and reveal the ability and earnestness displayed by members of the convention. When the convention recessed on December 15, 1922, it had completed its work on eight reports and these had been referred to the committee on phraseology and arrangement, which was authorized to act during the recess of the convention. One of the reports had been acted upon in the committee of the whole but had not been taken up by the convention. Another report had been partially considered in the committee of the whole and was awaiting further action at the beginning of the recess. At that time the remaining four committee reports had not been taken up for consideration.

After reassembling on April 16, 1923, the convention resumed its consideration of the reports of the committees, including that of the committee on senatorial and representative districts which was not submitted until after the recess. Considerable difference of opinion developed regarding some of the reports not already passed upon, particularly those relating to education, judiciary, taxation, redistricting and local government. This explains the prolongation of the convention which it had been anticipated would complete its work by June 15.

In November, 1920, when it was decided to hold a constitutional convention, there was considerable sentiment in favor of a general revision of the constitution. The financial depression, particularly in rural districts, produced a reaction with the result that the majority of the delegates elected on January 31, 1922 were strongly conservative. Some of the delegates were opposed to any revision and endeavored to secure an immediate adjournment of the convention. While this plan failed it was evident from the beginning that the convention would not be disposed to look with favor upon a proposal for a model constitution or any radical alterations in the existing organic law.

At first, sentiment in the convention appeared favorable to the submission of a revised constitution as a whole. The various committees presented reports recommending general revision of the article or articles that had been referred to them. Later, however, the members became convinced that this plan would probably result in the rejection of all the work of the convention, and it was accordingly decided to propose a series of 21 amendments, any or all of which may be adopted or rejected. While, as a rule, all changes in an article are included in one amendment, exceptions have been made in case of propositions concerning which considerable difference of opinion is anticipated. In order to avoid opposition to the revised article, the disputed matters have been submitted as separate amendments. The convention decided to submit the proposed amendments to the voters at a special election to be held on February 26, 1924.

An examination of the amendments proposed by the convention makes it clear that no revolutionary revision has been

attempted. Of the fifteen articles in the constitution of 1875, eight are left substantially unchanged except in particular sections and even in these the changes, for the greater part, relate to minor and relatively unimportant matters. The seven articles in which significant changes have been recommended are those relating to the legislative, executive and judicial departments, respectively, suffrage and elections, counties, cities and towns, revenue and taxation, and education. It is of interest to note that these are the articles in which amendments have been most frequently sought, and whose defects were chiefly responsible for the decision to hold a constitutional convention.

Before considering the changes proposed in these seven articles it is desirable to indicate briefly the more important modifications in the other parts of the constitution. No change is made in the preamble or in the articles dealing with boundaries and distribution of powers, and the article on impeachments contains only two minor changes of which one is purely formal. In the important article containing the bill of rights, the most significant change is the inclusion of a provision that an "indictment or an information shall be sufficient if it state in plain and concise language the facts constituting the alleged offense." This is an attempt to do away with the quashing of indictments on account of purely formal defects. Only two other changes are made in this article: one takes away from the jury in a libel case the right to determine the law as well as the facts, while the other provides that religious corporations may hold personal property and expands their right to hold real property so as to include all used for missionary, charitable and educational purposes, but prohibits their holding real estate for more than six years except that used solely for non-gainful religious, charitable and educational purposes.

The article on corporations in the present constitution is distinguished for its restrictive features introduced for the protection of stockholders and the public. Much of the opposition to a constitutional convention arose from the fear that corporate interests might be able to secure a modification of these provisions. It is therefore particularly significant that changes were

made in only three of the twenty-seven sections in this article. A provision that preferred stock may not be issued without the consent of all stockholders was changed so that the consent of those owning two-thirds of the stock would be sufficient. The section prohibiting discrimination by railroads was amended so as to remove the conflict with the federal Transportation Act. The third change was a minor one designed to insure the validity of corporate securities issued in accordance with legal authorization.

In the article on the militia the exemption from military service of those having religious scruples against bearing arms has been omitted, and several changes have been introduced for the purpose of making the system more efficient. The regimental officers are to be elected by the officers instead of the whole body of men in the regiment, and in active service all officers are subject to transfer or assignment as the commanding general may direct. The present provision restricting the formation of volunteer companies to infantry, cavalry and artillery is enlarged so as to recognize other branches of military service.

A new section is proposed, in the article dealing with miscellaneous provisions, prohibiting public officials and employees from appointing relatives to public positions. An existing section is also amended to make clear the power of the legislature to remove from office for cause all officers not subject to impeachment. A separate amendment under this article applies to Kansas City alone, and authorizes that city under certain conditions to pay for certain improvements out of the proceeds of general bond issues and to reimburse out of such proceeds those who have paid assessments for such improvements.

The article on the mode of revising and amending the constitution has been changed by omitting the sections providing for the holding of a constitutional convention, and by requiring the publication of proposed constitutional amendments in two issues of two newspapers in each county, representing the two dominant political parties, instead of in one newspaper in each county once a week for four weeks, as required at present. While the provision for a constitutional convention is omitted, it would still

be possible to secure such a convention by initiative petitions, or the legislature could make such provision in the exercise of its general powers.

Of the seven articles in which important changes have been recommended article IV relating to the legislative department is first in order. The provision regarding senatorial districts aroused more controversy than any other section in this article. The existing constitutional provisions require the legislature to make a new apportionment after each United States census, and provide that the districts shall be "compact" and "as nearly equal in population as may be." It is also provided that if the legislature fails to comply with this requirement, the governor, secretary of state and attorney-general shall make such redistricting. In practice the legislature has regularly failed to exercise this function, and the opposing political party has claimed that the successive redistricting by the three state executive officials has been characterized by the worst examples of gerrymandering. More recently, when the swing of the political pendulum brought the other party into power again, the redistricting made by the three executive officers was challenged, and the supreme court held that the adoption of the initiative and referendum amendment to the constitution had repealed the provision giving this power to such officials.

The bipartisan character of the constitutional convention made it extremely difficult to secure any agreement regarding this matter, but a compromise was finally reached. Under the proposed amendment the districting in accordance with the rule of apportionment for both representatives and senators is taken away from the legislature and conferred upon the governor, secretary of state, attorney-general, state auditor and state treasurer, or a majority of them. Their decision is not to be subject to the referendum, and failure to act is declared to be cause for impeachment. The first apportionment under this system is to be made in 1925. This plan is a great improvement over the existing system under which the senatorial districts have not been rearranged since 1901. Another proposed change in the organization of the legislature repeals the provision under

which the city of St. Louis is divided into representative districts, each of which is given not less than two nor more than four members, so that the single-ticket plan would prevail in that city as in all the counties of the state.

The present inadequate *per diem* of members of the legislature is increased from five dollars to ten dollars, and this is reduced to two dollars instead of one dollar after seventy days. In revising sessions (one each ten years) the period in which full pay can be received is reduced from one hundred and twenty days to ninety days. Moreover, while no limit is fixed by the existing constitution on the period during which full pay can be received in extra sessions, it is now proposed that a limit of thirty days shall be established for this purpose. Mileage is also restricted to ten cents per mile. Further, in an effort to cure extravagance in such matters as the appointment of clerks, it is provided that the total daily expense for officers and employees shall not exceed $400 for the house and $300 for the senate in regular sessions, and $200 and $150 respectively during extra sessions.

Only one change has been proposed in the provisions relating to legislative procedure. Under the constitution of 1875 no law except the general appropriation act could go into effect until ninety days after adjournment unless the legislature by a two-thirds vote in each house provides otherwise. As the supreme court has held that the adoption of the optional referendum took away this power of the legislature, except in case of laws necessary for the immediate preservation of the public peace, health or safety, the section has been changed to conform to this decision. As any act making appropriations for the expenses of state government, for maintenance of state institutions and for support of the public schools is not subject to the referendum, it is provided that such acts may go into effect at any time fixed by the legislature.

The numerous limitations upon legislative power are retained practically without any important modifications. It is proposed that the prohibition upon the granting of public money in aid of individuals shall not be construed to prevent aid for indigent mothers having dependent minor children, and that the existing

provision under which cities may pension firemen and grant relief to their widows and minor children shall be extended so as to apply equally to policemen. New sections authorize the legislature to enact compulsory or elective workmen's compensation laws, and provide that limitations upon legislative power shall also apply to laws initiated by the voters.

In addition to the foregoing proposals, which are all included in one amendment, there are three amendments dealing with matters falling under the legislative article submitted as separate propositions. One of these requires the legislature to provide by law for the safeguarding and promotion of the public health. The opposition of certain groups to such measures as compulsory vaccination, is probably responsible for the submission of this section as a separate amendment. Another separate amendment authorizes the issue of additional bonds, not exceeding $4,600,000, to complete payment of bonuses to the soldiers and sailors of the World War. Substantially the same amendment was proposed by the legislature in March, 1923; its inclusion by the constitutional convention with the proposed amendments was probably intended to facilitate earlier adoption.

The most important of these three separate amendments is the one modifying the existing provisions for the initiative and referendum. These devices were introduced in Missouri by a constitutional amendment adopted in 1908. The initiative has been used from the beginning without exciting much controversy, but the extensive use of the referendum in 1921 by one political party to block the legislative program of the party in power led to much discussion and demand for changes which would make each process more difficult. Under the amendment proposed by the constitutional convention the initiative is to be restricted to constitutional amendments and general laws, instead of being applicable to all laws as at present. The number of voters required for petitions has been increased from "not more than eight per cent" to "at least eight per cent" and to "twelve per cent" for the initiation of laws and constitutional amendments, respectively, and from "five per cent" to "at least ten per cent" for the referendum. The basis on which the percent-

ages are figured is now made the total vote for governor instead of that for judge of the supreme court, thus still further increasing the number required. A petitioner who is unable to write must have his mark witnessed by two persons, and where registration is required the signer must be a registered voter. Finally, in the case of the referendum the form of the question on the ballot is "Shall the act of the general assembly be rejected," thus requiring an affirmative vote to reject instead of a negative as under the existing provision. In this way the tendency of the uninformed voter to cast a negative vote will be an advantage instead of a detriment to the act of the legislature that becomes subject to the referendum.

In the executive department there have been introduced provisions for a budget that will materially improve the financial administration and prevent extravagance. The biennial fiscal period is changed so as to begin July 1 and end June 30 of the second year thereafter. At the beginning of each general assembly in January the governor is to submit the budget for the ensuing biennium containing a detailed statement of proposed expenditures and estimated revenues with recommendations regarding taxation or loans, if any, for increase or decrease of the revenues. The expenditures recommended are to be based upon itemized estimates submitted to the governor by the different administrative departments, boards and officers. All of these estimates are subject to revision by the governor before being presented to the legislature. The latter body may reduce or strike out items, but may not increase or add new items. The governor is given the right to be heard on matters relating to the budget, and the heads of executive departments may be required to appear in either house of the legislature to answer inquiries relating to it. Special provisions exist for the expenditures of the legislature and judiciary. After the budget has been finally passed the legislature may enact other appropriation measures, but only on condition that revenues to pay such appropriations remain unappropriated or are specially provided for; all of such measures must be separate bills for a single purpose and are subject to the governor's veto.

The second significant change in the executive department is the provision for a consolidation of all administrative work in not to exceed twelve departments. Five of these departments are substantially the same as those now existing and are to be presided over by elective heads in four cases and by an elective board in the other, but the legislature is left free to determine the organization of the other seven departments. The adoption of this plan would do away with numerous independent boards and commissions, and by bringing all administrative business of the same kind under one department would eliminate duplication and promote efficiency.

Existing and somewhat antiquated provisions regulating in detail the method of making election returns for state officers are eliminated, and this matter is left to be regulated by law. It is also provided that the salaries of such officers, as fixed by law, shall be full compensation for all official or *ex-officio* services performed. The semi-annual report these officers are required to make to the governor regarding disbursements is now made to apply also to all money and other property received by them.

By the proposed amendment of the judiciary article it is intended to provide a simplification of the court system and to prevent delays and congestion of the dockets. The most important innovation is the proposal for the creation of a judicial council consisting of the chief justice of the supreme court, the presiding judges of each of its divisions, the presiding judges of the Kansas City and Springfield courts of appeals, a judge of the St. Louis court of appeals and three circuit judges. This body is to meet at least once annually, and is given the power to provide such rules and forms of procedure in all courts as do not deny any remedy or any substantive right given by law. This will be an improvement over the present method of having these matters regulated by the legislature, though all rules made by the council are subject to legislative change or repeal. The judicial council is also given power to provide for the transfer of cases from one court of appeals to another, and to assign circuit judges to assist judges of other circuits, the courts of appeals or the supreme court. In this way congestion in some

courts can be relieved while the judges of others in which business is limited will be called upon to do their share of work, thus assisting to expedite the administration of justice.

The number of judges of the supreme court remains the same, but it is proposed that the chief justice shall be elected by the voters, as such, instead of being elected by the court. He is to be the president of the judicial council and the chief administrative officer of that body and the supreme court. The two divisions of the supreme court are retained, but as the chief justice is not assigned to a division each will consist of the same number of judges. The existing provision for assigning all criminal cases to one division is omitted, and the chief justice is given the power of making assignments of matters to each division. Cases may be transferred from a division to the court *en banc* as at present but, in addition, the chief justice may order such transfer, thus providing additional security for harmonizing decisions of the courts of appeals and the supreme court.

On account of the increased business of the St. Louis court of appeals the number of its judges has been increased from three to six, to sit in two divisions. The three existing commissioners of that court, as well as the four commissioners of the supreme court, are abolished and the legislature is prohibited from providing such commissioners in the future. The supreme court may abolish or reëstablish its divisions from time to time, and the judicial council may create additional divisions of the supreme court or courts of appeals for a period not exceeding ninety days, the additional judges necessary for such purpose to consist of circuit judges transferred by the judicial council.

The terms of the judges of the courts of appeals are reduced from twelve to eight years, and the pecuniary jurisdiction of such courts is increased from $7500 to $10,000, with the right retained by the legislature to increase or diminish this amount. The committee on judiciary recommended the establishment of a county court in each county to take over probate business and part of the jurisdiction of circuit courts; and also recommended the reduction of the number of circuits to fifteen. These recommendations were not approved, so that existing probate and

other local courts are not disturbed except that the legislature is given power to change or abolish them.

Four important changes have been provided in the article on suffrage and elections. The first, by restricting the right to vote to citizens of the United States, strikes out the existing provisions under which certain aliens have the suffrage. Another change makes it possible to open ballot boxes in any case in which the violation of the laws governing elections or nominations is under investigation or at issue instead of being restricted, as at present, to cases of contested elections. The legislature will be required to regulate the registration of voters in all cities having a population of more than 10,000 inhabitants, the existing constitution limiting this power to those cities having more than 25,000 inhabitants. Further, it is proposed to add a new section requiring the legislature to enact laws regulating primary elections and conventions, giving political parties the option of nominating their candidates by either method. As it was recognized that this provision would be opposed by the supporters of the present state-wide direct primary, the convention decided to submit it as a separate amendment.

The article relating to counties, cities, and towns has been changed in accordance with the demand for improvement in this field. The constitution makes a classification of cities, takes from the legislature all power over this matter, and strengthens the restrictions upon local and special legislation affecting cities. The home rule charter plan which was invented by the constitutional convention of 1875 for cities of more than 100,000 population is now extended so that any city of 3,000 population or more may draft its own charter. The home rule charter remains subject to the requirement that it must be consistent with the constitution, but as regards acts of the legislature this requirement applies only to "general laws of the State relative to matters of general state concern or operation."

Of outstanding importance is the declaration that cities that have adopted these special charters shall possess general powers in matters of local concern and municipal government. This reverses the present rule that cities possess only enumerated

powers, and the adoption of the new plan would greatly simplify the entire matter of city government.

While express recognition is given to the right of a city to define and control its own police department, it is provided that in cities with a population of 70,000 or more there shall be a police commissioner or board of police commissioners, who may be removed by the governor at his discretion, though he has no authority to fill any vacancy. Elections, control over public utilities, and examination and auditing of accounts in cities remain subject to legislative regulation.

The legislature is authorized to provide for the extension of the boundaries of cities so as to include contiguous territory in any adjoining county. This is primarily for the benefit of St. Louis. A plan is also provided whereby the question of uniting the City of St. Louis and St. Louis County with a partial or entire consolidation of their governments may be submitted to the voters and go into effect, if approved by a majority of the voters of each unit. A provision whereby adjoining counties might be consolidated could also be used to relieve the St. Louis situation. Another provision for the special benefit of St. Louis requires members of its board of aldermen to be nominated and elected by wards until otherwise provided by charter.

City zoning is expressly recognized by a provision authorizing any city to divide its territory into zones or districts, and to regulate the use of land and structures within such zones to the extent and in the manner provided by general laws passed by the legislature. Excess condemnation is also authorized whenever it is judicially determined that property in excess of that needed for any public improvement is required to protect or preserve the improvement, and the quantity condemned is reasonable.

In addition to the provision for consolidation of adjoining counties and changes in county boundaries, there are several other proposals affecting counties. The prohibition upon sheriffs and coroners succeeding themselves is repealed; the power of the county court to fill vacancies in these offices is taken away, and devolves upon the governor; and the legislature is required to provide a uniform system of accounting for all county offices.

The article on revenue and taxation received considerable attention at the hands of the convention and its committees. The chief controversy arose over the question of the general property tax, with the result that a compromise was effected and the legislature left free either to continue this system as now in force, or to classify different kinds of property and provide different bases of valuation and forms of taxation for each class, subject to the proviso that all property in each class be subjected to a uniform rate. This would give the legislature greater freedom in adapting the system of taxation to modern conditions and forms of property. On account of the differences of opinion concerning this question, the proposition is submitted as a separate amendment, to which has been joined a section relating to the taxation of motor vehicles.

Another question involving differences of opinion was the abolition of the present *ex-officio* state board of equalization and the substitution in its place of an appointive state tax commission. A compromise proposal to abolish the state board of equalization is made without any recommendation as to a substitute, thus leaving the legislature free to provide an agency to perform the duties. Here again the controversy resulted in the decision to submit the proposal as a separate amendment.

A third amendment proposes a general revision of the remaining sections of the article on revenue and taxation. About one-half of the sections remain substantially unchanged. The present exemption from taxation of cemeteries is changed, so as not to apply to those held for private profit; as to public cemeteries it is extended to property held in trust for purposes of improvement, and also includes exemption from special assessments for local improvements. The amount of real estate exempt from taxation, when used for religious purposes, is slightly increased; while the exemption of property used for educational and charitable purposes, or belonging to agricultural and horticultural societies not operated for private profit, is widely extended to cover not only a limited amount of real estate, as under the present constitution, but also such property as endowments or income.

Few changes are proposed in the strict limitations upon the rate of taxation. The maximum rate for state purposes is actually decreased from fifteen cents to ten cents on the $100 valuation, and the rate for paying the interest on the certificates of indebtedness is reduced from three cents to one cent. The legislature by a two-thirds vote of each house may levy a tax not exceeding two cents on the $100 valuation, to be applied to the payment and retiring of such certificates. Because of difficulty that has been experienced in raising sufficient revenue for public schools, the maximum rate for school purposes has been increased to one dollar and fifty cents on the $100 valuation, but any increase above seventy-five cents in cities of 70,000 inhabitants or more or in districts maintaining a four-year high school, and above forty cents in other districts, cannot be made without the consent of a majority of the voters; for any increase between one dollar and one dollar and twenty cents a two-thirds majority is necessary, and for any increase above the latter amount a three-fourths vote is required. The rate determined at the election will remain in force for such time as stated in the notice of election, not to exceed four years unless later changed by like notice and vote.

No substantial change has been made in the limitations imposed upon the amount of debt that may be incurred by the state and its local subdivisions, except that the existing provisions under which cities of 75,000 population or more may borrow money on the security of their public utilities have been extended to all cities and municipal corporations. A significant change has been made, however, in the provision making the bonds payable in annual serial installments, thus avoiding the danger of loss of sinking funds through mismanagement or corruption, and also making it possible to sell the bonds at a better rate. Another important change is the provision authorizing municipal corporations to borrow money for establishing a permanent improvement revolving fund, to be used in paying for improvements made by special assessments against the property specially benefited. If the city pays for such improvements and later collects from the property-owners, the contract price will be greatly reduced because the contractor will not need to include anything to cover risk of invalidity of special tax bills or expenses of collection.

It has been estimated that a provision of this kind will each year save property-owners an amount equal to many times the cost of the constitutional convention.

The most important changes proposed in the amended article on education are the substitution of an elective state board of education for the present *ex officio* board and the provision for a commissioner of education, appointed by the board and removable at its discretion, to take the place of the present elective state superintendent of schools. The board of education, to consist of six members, is to have general supervision of instruction in the public schools and is to prescribe the duties of the commissioner. For many years educational associations and friends of education have been urging changes of this character, though the majority have favored an appointive rather than an elective board of education. Other changes proposed in this article include authorization for the legislature to provide for, but not compel, instruction of persons above or below the school age, and recognition of the right of the general assembly to retain, establish, maintain and prescribe the method of management of other free educational institutions.

A pamphlet has been issued by the constitutional convention containing in parallel columns the proposed amendments and the sections of the present constitution that are affected thereby, a brief address to the people also being included. This pamphlet has been issued in numbers sufficient to supply all interested voters.

It is difficult to predict the action of the voters on the proposed amendments. Considerable criticism has been aroused on account of the long period during which the convention was in session and the great expense incurred. This has prejudiced many voters against the recommendations of the convention. On the other hand, individuals and groups have formed an Association for Constitutional Amendments to conduct a campaign for the adoption of the amendments and, at present, (December, 1923) this association appears to be receiving favorable responses to its appeal for financial and other support. The fact that the voting will be at a special election favors the amendments, and if the interest of the voters can be aroused it is probable that some, if not the majority, of the amendments will be approved.

PUBLIC AGENCIES AND PRIVATE AGENCIES

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Is there any fundamental distinction between so-called "public" and "private" agencies, officers, institutions, corporations, associations, persons—legal entities and quasi-entities of all sorts? It is the theory of the courts that such a distinction exists, but their attempts through a maze of decisions[1] logically to establish a principle of distinction have been futile.

Several bases of distinction have been adopted by the courts, including, first, the purpose or interest involved. "An office . . . seems to comprehend every charge or employment in which the public is interested."[2] Thus "private corporations are those which are created for the immediate benefit and advantage of individuals. . . . Public corporations are those which are created for public purposes."[3]

However, it is held that the whole interest in the corporation must be public to make it a public corporation. "Public corporations are political corporations or such as are founded wholly for public purposes and the whole interest in which is in the public. The fact of the public having an interest in the works or property or the object of a corporation, does not make it a public corporation."[4] But it is now well established that even when the state is the sole owner of the stock of the corporation, the state and the corporation may be absolutely distinct, and the corpora-

[1] For the present purpose it has been considered sufficient generally to cite only a few illustrative cases.

[2] Michael v. State, 163 Ala. 425, 50 So. 929 (1909).

[3] Dartmouth College v. Woodward, 1 N. H. 111, 115 (1817).

[4] Ten Eyck v. Delaware and Raritan Canal Co., 3 Harr. 200, 203. (1841). See also Dartmouth College v. Woodward, 4 Wheat, 518, 4 Law. ed. 629, 630 (1819); Story, J., *ibid.* 629, 666, 667; State Bank of Ohio v. Knoop, 16 How. 368, 14 Law. ed. 977, 982 (1853); Baring v. Dabney, 19 Wall. 1, 22 Law. ed. 90, 93 (1874).

tion a private corporation.[5] Likewise, according to one view, political parties "are voluntary associations, pure and simple, while the functions they perform relate in the main to public concerns."[6]

However, private corporations that are "affected with a public interest" form a separate class of "quasi-public" corporations.[7] "Corporations, other than municipal, which are purely public, naturally divide into [quasi-] public and private corporations; that is, into those that are agencies of the public affecting it, and those which only affect it indirectly."[8] The directors of a railroad thus act "in the double capacity as agents for the company and as trustees for the public, clothed with an important trust."[9] The corporation is thus both private and public.

Moreover, it appears that "public" and "private" are here only relative terms. "Plainly circumstances may so change in time or so differ in space as to clothe with such an [public] interest what at other times or in other places would be a matter of purely private concern."[10] But the rigidity of custom has

[5] Bank of the United States v. Planters' Bank, 9 Wheat. 904, 6 Law. ed. 244 (1824); Briscoe v. Bank of Kentucky, 11 Pet. 257, 9 Law. ed. 709, 730 (1837); Curran v. Arkansas, 15 How. 304, 14 Law. ed. 705, 708 (1853); United States v. Strang, 254 U. S. 491, 65 Law. ed. 368 (1921). *Contra.* Dartmouth College v. Woodward, 1 N. H. 111, 117 (1817); Story, J., Dartmouth College v. Woodward, 4 Wheat. 518, 665, 669, 4. Law. ed. 629, 666, 667 (1819); "What was this corporation in fact? A mere legal entity; a mere agent of the state, existing for the state. . . . The metaphysical personage only was liable; and the promise [of the corporation], if it is not to be treated as a mere delusion and phantom, was the promise of the state itself through that personage." Story, J., dissenting, Briscoe v. Bank of Kentucky, 11 Pet. 257, 9 Law. ed. 709, 737, 745 (1837).

[6] Ladd v. Holmes, 40 Ore. 167, 184, 66 Pac. 714, 720 (1901). See also Attorney General v. Barry, 74 N. H. 353, 68 Atl. 192 (1907).

[7] Munn v. Illinois, 94 U. S. 113, 24 Law. ed. 77 (1877); McCarter v. Firemen's Ins. Co., 74 N. J. E. 372, 73 Atl. 80, 82 (1909).

[8] Foster v. Fowler, 60 Pa. St. 27, 30 (1869).

[9] Pueblo v. Arkansas Valley Railroad (Co. v.) Taylor, 6 Colo. 1, (1881).

[10] Block v. Hirsh, 256 U. S. 135, 65 Law. ed. 865, 870 (1921). "It must be admitted that many things are considered a public use now that were not so considered a half or even a quarter of a century ago, and it may be, and it is probable, that in the not distant future many things which are now considered a private use, by the changing conditions and evolution of business, will of necessity become a public use." State v. Superior Court for Thurston County, 42 Wash., 660, 85 Pac. 666, 668 (1906).

of course a conservative influence, in spite of changing conditions.[11]

All this is confusing. The difficulty lies in the fact that all institutions must necessarily, at least from the modern viewpoint, be conceived as founded for the public benefit. This fact has been admitted by the courts. "All corporations, whether public or private, are in contemplation of law, founded upon the principle that they will promote the interest or convenience of the public."[12]

In the feudal state there is no distinction between public agencies and private agencies. "Jurisdiction is property, office is property, the kingship itself is property."[13] And some traces of this condition appear in modern English law.[14] In this country, although the general idea of an office as property has received some acceptance,[15] it has for the most part been abandoned.[16] As the feudal emphasis upon individual interests

[11] In deciding whether a tax is for a "public purpose," the courts "must be governed mainly by the course and usage of the government, the objects for which taxes have been customarily and by long course of legislation levied, what objects have been considered necessary to the support and for the proper use of the government." Citizens' Savings and Loan Association v. Topeka, 20 Wall. 655, 22 Law. ed. 455, 461 (1875).

[12] Ten Eyck v. Delaware Co., 3 Harr. 200, 203 (1841). See also Regents of the University of Maryland v. Williams, 9 Gill. & J. 365, 399 (1838); Rundle v. Delaware and Raritan Canal, 1 Wall. C. C. 275, 290 (1849); Mills v. Williams, 33 N. C. 558, 561 (1850). Cf. J. P. Davis, *Corporations*, I, 27–32 (1905); G. H. Sabine, in 29 *Philosophical Review*, 314 (1920); G. H. Sabine and W. J. Shepard in introduction to K. Krabbe, *Modern Idea of the State* (Sabine and Shepard's trans.), lx (1922).

[13] F. Pollock and F. W. Maitland, *History of English Law*, I, 230–1 (1903).

[14] "Offices, which are the right to exercise a public or private employment, and to take the fees and emoluments thereto belonging, are also incorporeal hereditaments; whether public, as those of magistrates; or private, as of bailiffs, receivers, and the like. For a man may have an estate in them." Blackstone, *Commentaries*, bk. 2, p. 36. See also Knoup v. Piqua Bank, 1 Ohio St. 603, 616 (1853).

[15] Hoke v. Henderson, 4 Dev. L. 1 (1833); Ekern v. McGovern, 154 Wis. 157, 142 N. W. 595, 623 (1913); Cleveland v. Luttner, 92 Ohio St. 493, 111 N. E. 280 (1915).

[16] State v. Dews, R. M. Charlt. 397, 400 (1835); *Ex parte* Hennen, 13 Pet. 230, 10 Law. ed. 138, 153 (1839); Taylor v. Beckham, 178 U. S. 548, 44 Law. ed. 1187, 1200 (1900); State v. Hendrick, 241 S. W. (Mo.) 402, 422 (1922); 25 Am. Dec. 701. But in the well-established classification of public agencies into offices proper and employments, while property character is generally denied to the former, it is ascribed to a considerable extent to the latter. B. Wyman, *Administrative Law*, 159–166 (1903); F. J. Goodnow, *Principles of the Administrative Law of the United States*, 222–5 (1905); 25 Am. Dec. 701.

makes a fundamental distinction between public and private persons impossible, so the modern emphasis upon the general interests has logically the same result.

Difference in function has also been made the basis of distinction between public and private persons. "An office is a right to exercise a public function or employment;"[17] or, most widely accepted, "the term 'office' implies a delegation of a portion of the sovereign power of the government to the person filling the office."[18] And a corporation "organized to exercise . . . part of the sovereign power of the state" is a "governmental or political body."[19] On the other hand, it is also established that "a corporation may be private although it performs a public duty."[20]

Moreover, functions performed by the state have been divided by the courts into two classes, "public" ("political," "sovereign," "governmental") and "private" ("business, commercial")—and the state thus becomes two distinct legal persons in one. "When the United States enters into commercial business, it abandons its sovereign capacity and is to be treated like any other corporation."[21] Where, however, the functions are considered to be "governmental," and they are performed by the state indirectly through a corporation created by the state, the corporation is a public agency. "When the business undertaken by the corporation is that of the state, and not a

[17] Waldo v. Wallace, 12 Ind. 569, 572 (1859).

[18] Olson v. Scully, 296 Ill. 418, 129 N. E. 841, 842 (1921). "A clergyman, in the administration of marriage, is a public officer, and in relation to this subject, is not at all distinguished from a judge of the superior or county court, or a justice of the peace, in the performance of the same duty." Goshen v. Stonington, 4 Conn. 209, 218 (1822).

[19] Wood v. Quimby, 20 R. I. 482, 40 Atl. 161, 163 (1893).

[20] Trustees of Exempt Firemen's Fund v. Roome, 93 N. Y. 313, 321 (1883). See also Dartmouth College v. Woodward, 4 Wheat, 518, 4 Law. ed. 629, 658 (1819); Georgia Hussars v. Haar, 118 S. E. (Ga.) 563, 564 (1923).

[21] Salas v. United States, 234 Fed. 842, 844 (1916). See also Bank of the United States v. Planters' Bank, 9 Wheat. 904, 6 Law. ed. 244 (1824); Hall v. Wisconsin, 103 U. S. 55, 26 Law. ed. 302, 305 (1880); South Carolina v. United States, 199 U. S. 437, 50 Law. ed. 261, 267 (1905); United States v. Strang, 254 U. S. 491, 65 Law. ed. 368 (1921); Sloan Shipyards Corporation v. United States Shipping Board Emergency Fleet Corporation, 258 U. S. 549, 66 Law. ed. 762 (1922).

mere private business, the fact that the government uses the medium of a private corporation in conducting this business instead of conducting it in its own name, should make no difference, and the government cannot then be sued by suing the corporation any more than the government could be sued directly."[22]

This doctrine has been applied by the courts especially in cases of municipal corporations, whose "dual character" is thus described: "They exercise powers which are governmental and powers which are of a private or business character. In the one character a municipal corporation is a governmental subdivision, and for that purpose exercises by delegation a part of the sovereignty of the state. In the other character it is a mere legal entity or juristic person."[23] But the courts have been unable to establish any principle for a distinction between the two classes of functions in this connection, and the utmost confusion has necessarily resulted. "It must be admitted that many of the distinctions that this court, as well as other courts of last resort, have made between what are designated the public and private powers, duties, and liabilities of municipal corporations are difficult to understand."[24]

With similar difficulty[25] the courts have distinguished "offices" proper from other agencies, and especially from "employments." "Although an office is 'an employment' it does not follow that every employment is an office."[26] Various bases of distinction have been applied, but the tendency has been to depend chiefly

[22] Southern Bridge Co. v. United States Shipping Board Emergency Fleet Corporation, 266 Fed. 747, 750 (1920). See also Ballantine v. Alaska Northern Railway Co., 259 Fed. 183 (1919).

[23] Vilas v. Manila, 220 U. S. 345, 55 Law. ed. 491, 495 (1911). "A municipal corporation may perform the functions of a private corporation. . . . But that by so doing it loses its distinctive municipal character is a proposition that does not require discussion." Lehigh Water Company's Appeal, 102 Pa. St. 515, 528 (1883).

[24] Kippes v. Louisville, 140 Ky. 423, 131 S. W. 184 (1920).

[25] There is a "wilderness of law upon the simple but difficult question." Hartigan v. Board of Regents of West Virginia University, 49 W. Va. 14, 38 S. E. 698, 701 (1901).

[26] United States v. Maurice, 2 Brock 96, 26 Fed. Cas. 1211, 1214 (1823).

upon the nature of the functions performed. "The term 'office' implies a delegation of a portion of the sovereign power to, and the possession of it by, the person filling the office, while an 'employment' does not comprehend a delegation of any part of the sovereign authority."[27] However, the term "office" has often been applied by the courts to "positions in the public service to which little, if any, of this exalted power has been entrusted";[28] and, accordingly, contradictions abound.[29] Moreover, the constitution or statute may expressly determine the classification, irrespective of the nature of the function performed.[30]

Like difficulties have arisen in the classification of "private" corporations into "private corporations" proper and "quasi-public corporations," in accordance with the nature of the function performed.[31]

To a very large extent "private" persons—individuals, associations, corporations—perform various recognized "public" functions pertaining to one or more of the three departments of government.

The power of the father, weakened as it has been in modern times, still retains much of its early "police" character; and the powers of others acting *in loco parentis* are similar. The authority of a master of a ship at sea "is necessarily summary, and often absolute. For the time he exercises the right of sovereign control; and obedience to his will, and even to his caprices, becomes

[27] State v. Sheats, 78 Fla. 583, 83 So. 508, 509 (1919). Thus, in a general way "the principal agencies of the administration are its officers, the minor agencies are its employees." B. Wyman, *Administrative Law*, 159–60 (1903). See also J. K. Bluntschli, *Theory of the State* (Ritchie's trans.), 526–8.

[28] Smith v. VanBuren County, 125 Ia. 454, 101 N. W. 186 (1904).

[29] "Accepting any or all of the many definitions of public office which have been laid down by the jurists, it is still difficult to say whether a particular position is an office or a mere employment." Sanders v. Belue, 78 S. C. 171, 58 S. E. 762, 763 (1907).

[30] State v. Thompson, 122 N. C. 493, 29 S. E. 720, 721 (1898); Burnap v. United States, 252 U. S. 512, 64 Law. ed. 692, 694 (1920).

[31] 18 An. Cas. 1063–6, note (1911). A single individual may have a "quasi-public" character. So it is said that "an attorney at law is not indeed, in the strictest sense, a public officer. But he comes very near it." Robinson's Case, 131 Mass. 376, 379 (1881). See also Bowers v. Bowers, 26 Pa. St. 74, 77 (1856), in regard to an administrator.

almost indispensable."[32] Both common law and statute law empower private individuals to make arrests under certain conditions, while the abatement of nuisances and other forms of "self-help" exercised by private individuals and corporations involve the same principle. And there are many similar situations. The principle of "self-government" is recognized in granting the power to nominate for appointment and even to appoint[33] public officials to various private concerns, such as medical associations, agricultural societies, and labor organizations. The recent movement in this country for a "self-governing bar" has precedent in England, Canada, and early New England.

Moreover, judicial functions are also exercised by "private" persons. At common law "the arbitrators constitute a tribunal, created by the parties themselves; they are judges, appointed by them, instead of those existing under the law of the land."[34]

There are clear instances of legislative authority exercised by private agencies. "The miners of each mining district may make such regulations, not in conflict with the laws of the United States, or with the laws of the state or territory in which the district is situated, governing the location, manner of recording, amount of work necessary to hold possession of a mining claim, subject to the following requirements."[35] Even the power of taxation has been granted to a private corporation. There is much other practical delegation of legislative power to private persons.[36] Moreover, the same principle is involved in the enactment of "conventional law" by private persons. "Agreement is a law

[32] Chamberlain v. Chandler, 3 Mason, 242, 5. Fed. Cas. 413, 414 (1823).

[33] Clearly "public" functions. *Ex parte* Frazer, 54 Cal., 94, 96 (1880).

[34] Burroughs v. David, 7 Ia. 155, 158 (1858). But these arbitrators are not considered "officers" of the state. Farrington v. Hamblin, 12 Wend. 212, 213 (1834).

[35] United States Revised Statues, §2324 (1872). The "local customs and rules" of miners in the mining districts of the far west were enforced by the courts before there was any statutory authority for so doing. Jennison v. Kirk, 98 U. S. 453, 25 Law. ed. 240 (1879). Note a somewhat similar status of the rules of a bar association. *In re* Neuman, 169 App. Div. 638, 155 N. Y. S. 428, 430 (1915).

[36] Cf. H. L. McBain, in 36 *Political Science Quarterly*, 617–41 (1921); 8 *Virginia Law Review*, 450–4 (1922).

for those who make it, which supersedes, supplements or derogates from the ordinary law of the land. . . . To a very large extent, though not completely, the general law is not peremptory and absolute, but consists of rules whose force is conditional on the absence of any other rules agreed upon by the parties interested."[37] The "sovereign" power of eminent domain is conferred upon many private corporations.

All three governmental powers, legislative, judicial, and executive, have been exercised from an early period by the great British mercantile companies, such as the East India Company and the Hudson Bay Company.[38]

Private persons thus perform functions the same in character as those performed by some governmental agencies. "All the things that it [humane society] does or can do would naturally and primarily devolve upon the police department, and the society exists only because it can do the work of the police more effectively than they can."[39]

The compulsory authority of the public office or corporation has been emphasized as its distinguishing characteristic.[40] But in the face of the actual exercise of "police" functions by private persons, and the absence of the compulsory feature from many public offices, this cannot be maintained. It is at most a matter of difference in degree, and difference in degree in many cases does not exist.[41]

[37] J. W. Salmond, *Jurisprudence* (2nd ed.), 31 (1907).

[38] P. S. Reinsch, *Colonial Government*, ch. 9 (1902).

[39] People v. New York Society for the Prevention of Cruelty to Children, 161 N. Y. 233, 55 N.E. 1063, 1065 (1900). See also Corbett v. St. Vincent's Industrial School, 177 N. Y. 16, 68 N.E. 997, 998 (1903). "The powers residing in a master over his slave, in a father over his child, and in a guardian over his ward, subserve the same general purposes as the powers of judges and other ministers of justice." Austin, *Jurisprudence* (4th ed.), II, 747. See also J. P. Davis, *Corporations*, II, 254–5 (1905); H. Krabbe, *Modern Idea of the State* (Sabine and Shepard's trans.), 124–6 (1922).

[40] "'Tis a rule that where one man hath to do with another man's affairs against his will, and without his leave, that is an office, and he who is in it is an officer." Counsel in King v. Burell, Carth. 478, 479 (1699); approved in Leigh's Case, 1 Munf. 468, 475 (1810); White v. Clements, 39 Ga. 232, 274 (1869). See also Morrison v. Morey, 146 Mo. 543, 48 S.W. 629, 633 (1898).

[41] Cf. A. F. Bentley, *Process of Government*, 264 (1908); G. D. H. Cole, *Social Theory*, 128–9 (1920); H. Krabbe, *Modern Idea of the State* (Sabine and Shepard's trans.), 124–6 (1922).

There are decisions to the effect that "political or public powers cannot be delegated to private persons or individuals,"[42] and there are express constitutional provisions to the same effect.[43] In the absence of such constitutional provisions, express or implied, it is impossible logically to justify the decisions;[44] but the courts perhaps here dimly perceive the absurd contradiction involved: an office is public because it performs public functions; private persons perform public functions. The legal objections are overcome, of course, if the distinction is abandoned, and the person performing the public function is considered *ipso facto* a public agency. "The act of appointing to a governmental office is in itself the exercise of a governmental function, and can be exercised only by a governmental office. Therefore, when the power to make such appointment is conferred on a hitherto unofficial person . . . the person on whom it is so conferred becomes *ipso facto* a public officer."[45]

Similar considerations apply to the reverse situation, where "commercial" functions are exercised by "public" agencies.[46] These "commercial," "non-governmental," "private" functions performed, to an ever increasing extent, by the various units of government[47] are too common to require illustration.

Not only is there no essential distinction in the nature of the functions performed by public and private persons, but the source of these functions is exactly the same. It has been said that "the government is the fountain of office";[48] that the source of public office "must in this country be found in the sovereign

[42] Bullock v. Bellheimer, 175 Ind. 428, 94 N.E. 763, 767 (1911). See also Ames v. Port Huron Log Driving & Booming Co., 11 Mich. 139, 147 (1863); Rouse v. Thompson, 228 Ill. 522, 81 N.E. 1109, 1113 (1907); Morton v. Holes, 17 N. D. 154, 115 N.W. 256, 258 (1908).

[43] Constitution of Colorado, art. 5, sec. 35 (1876).

[44] Columbia Bottom Levee Co. v. Meir, 39 Mo. 53, 57 (1866); Slaughterhouse Cases, 16 Wall. 36, 21 Law. ed. 394, 405 (1873); Parke v. Bradley, 204 Ala. 455, 86 So. 28, 31 (1920).

[45] State v. Washburn, 167 Mo. 680, 67 S.W. 592, 595 (1902). See also Parke v. Bradley, 204 Ala. 455, 86 So. 28, 31 (1920).

[46] Illustrated by cases involving the powers of taxation and eminent domain.

[47] W. E. Walling and H. W. Laidler, *State Socialism* (1917).

[48] State v. Valle, 41 Mo. 29, 31 (1867).

authority speaking through constitution and statute."[49] However, the status of private persons is, to a considerable extent, determined by the statute law, and private corporations, as well as public corporations, owe their origin wholly to the statute law, general or special. The nature of the corporation does not depend on its source. "A corporation . . . does not share in the civil government of the country, unless that be the purpose for which it was created. . . . It is no more a state instrument than a natural person with the same powers would be. . . . From the fact . . . that a charter of incorporation has been granted, nothing can be inferred which changes the character of the institution."[50] In fact, the old common law made no division of corporations into "public" and "private" corporations.[51] "A private corporation is just as much a creature of the state as a public corporation."[52]

It would seem, then, that there is no peculiar quality of statute law that can determine the "public" or "private" status of a legal person. Both the final source and the fundamental

[49] State v. Mackie, 82 Conn. 398, 74 Atl. 759, 761 (1909). "All governmental powers are in their natures either legislative, executive, or judicial. . . . In that article of the constitution all the powers of the state government are disposed of, and every one who lawfully exercises any state governmental function is able to trace the source of his authority to one of the three departments there named." State v. Washburn, 167 Mo. 680, 67 S.W. 592, 594 (1902). The constitution itself may be more or less explicit in this matter. "The constitution [art. 2, sec. 2] then is understood to declare, that all offices of the United States, except in cases where the constitution itself may otherwise provide, shall be established by law." United States v. Maurice, 2 Brock. 96, 101 (1823). See also Burnap v. United States, 252 U. S. 512, 64 Law. ed. 692, 694 (1920). Likewise statute may deny official character. "The fish and game commissioners . . . are not to be deemed or considered as officers within the meaning of the constitutional provision," etc. Oregon Laws, §7385 (1920).

[50] Dartmouth College v. Woodward, 4 Wheat. 518, 4 Law. ed. 629, 659 (1819). See also Minear v. State Board of Agriculture, 259 Ill. 549, 102 N.E. 1082, 1085 (1913).

[51] Hobbes, *Leviathan*, ch. 22 (1651); 8 *American Law Review*, 189–239 (1874); J. P. Davis *Corporations*, I, 27–31 (1895); W. B. Hunting, *Obligations of Contract Clause*, Johns Hopkins University Studies in Historical and Political Science, series 37, no. 4, pp. 65–93 (1919); State v. Bank of South Carolina, 1 Spears 433, 502 (1843).

[52] O'Brien, J. Ryan v. New York, 177 N. Y. 271, 69 N. E. 599, 602, 604 (1904.)

character of all law are exactly the same. Because through historical accident one legal personality has been determined by the statute law and another, wholly or partly, by the common law, it does not follow that there is any essential difference in the nature of the two persons.

It is said, broadly, that "no public office can depend on the will of private persons, who may call it into existence for their own purposes and at their own pleasure";[53] and, particularly, with regard to "private" arbitration: "The arbitrators constitute a tribunal, created by the parties themselves; they are judges, appointed by them, instead of those existing under the law of the land. . . . Arbitrators are a tribunal created by the parties and by them invested with authority; . . . this is not derived from the state, or the law."[54] But the creation of the arbitral tribunal and the grant of its authority "by the parties themselves" are effective only by reason of the same "law of the land" that governs the organization and jurisdiction of the courts. "The rights and duties of political subordinates, and the rights and duties of private persons, are creatures of a common author: namely, the sovereign or state."[55]

The "creation" of a public agency may be signified by formal statutory proclamation: "A board is hereby created and established, to be known as the state livestock sanitary board." Or a "private" person already existing may thus be transformed into a "public" person: "The Medical Association of the State or

[53] Underwood v. McDuffe, 15 Mich. 361, 367 (1867).

[54] Burroughs v. David, 7 Ia. 155, 159 (1858).

[55] Austin, *Jurisprudence* (4th ed.), II, 747. A legal right is "a capacity residing in one man of controlling, with the assent and assistance of the state, the actions of others." T. E. Holland, *Jurisprudence* (11th ed.), 82 (1910). "The private individual claims certain powers of action and the law is the arbiter of the claim; he is required to assume certain obligations and responsibilities for his action, and again it is the law which lays these duties upon him. . . . Now it is evident that in the modern state the claim of an agency of the government to exercise a given power has just the same sort of foundation as that of the private individual. It is a claim the warrant for which must be found in the law. . . . The official may or must do things, indeed, in his official capacity which the private citizen may not do, but this is only because the law makes these things rights and duties of his office." G. H. Sabine, in 29 *Philosophical Review*, 315 (1920).

Alabama is the state board of health"; "an attorney is a public officer." But the "creation" or "establishment" of a public agency is of itself a mere ceremonial act. "Calling" it an office is significant only as evidence of "making" it an office.[56]

In the absence of formal statutory definition, it has been considered that the public nature of an agency may be determined by the control to which it is subjected by acknowledged public, and especially statutory authority. For example, it has in this way been held that attorneys are public officers. "Receiving their authority from the court, they are deemed its officers."[57] But the objection to this is conclusive: "Various classes of persons are licensed . . . with an exclusive privilege in their employment; yet they are not public officers. Physicians are also licensed, pursuant to statutes; yet they hold no office or public trust in legal construction. Lawyers are licensed to practise in one of the learned professions, and physicians in another; and there are many regulations by law for their government, as a distinct order of men in society; but they are not trustees nor agents for the public any more than persons licensed to carry on the business of banking. The fees of attorneys are fixed by law; and so is the compensation of cartmen, and bakers, and ferrymen."[58] In fact, every person "lives, moves and has his being, subject to constant legislative supervision."[59]

So the "unrestrained" governmental control to which public corporations are subject cannot logically be considered to be, as has been maintained, [60] "the essence of a public corporation." It is well settled, as has been noted, that even where the state owns all the stock of the corporation and the legislature has the exclusive and unrestrained control over the corporation, the corporation is not necessarily a public corporation. In any event, the difference of control that may be exercised in the two cases is a

[56] "The constitution not only makes them officers but in express terms calls them officers." People v. McKee, 68 N. C. 429, 434 (1873).

[57] Hamilton v. Wright, 37 N. Y. 502, 503 (1868).

[58] In the Matter of the Oaths, 20 Johns. 492, 493 (1823). See also People v. Purdy, (Ill.) 135 N.E. 87, 89 (1922).

[59] *American Law Review*, 8, p. 236 (1874).

[60] Regents of the University of Maryland v. Williams, 9 Gill. & J. 365, 401 (1838); Thompson v. Lambert, 44 Ia. 239, 243 (1876).

mere accident of our constitutional law, and under modern constitutional provisions and interpretations it tends to diminish. The corporation is subject to "unrestrained" control because it is public, rather than public because it is subject to such control.[61] There is, then, nothing essential in the creation or control of a public agency that distinguishes it from a private agency.

It is apparent, therefore, that the distinction between "public" and "private" functions, where any at all exists, is only an historical distinction. The distribution of functions between the agencies of the state and private persons, "is always varying and in a state of flux,"[62] and the courts are necessarily at a loss to find an inherent and permanent distinction where none in fact exists.

Although the source of its funds, public or private, is some evidence of the character of an office or corporation,[63] this is not at all conclusive—is "an unimportant circumstance."[64] "A corporation may be private . . . even though its funds are provided by the state."[65] Conversely, the support of public corporations or offices by private donations does not alter their character,[66] even when the whole support comes from such sources.

Austin suggested one more possible test of distinction between "political conditions" and "private conditions," but only to repudiate it on account of its "vagueness." "I cannot see how any precise line of demarcation between political and private conditions can possibly be drawn, unless it is this: that when the

[61] Dartmouth College v. Woodward, 4 Wheat. 518, 4 Law. ed. 629, 659 (1819). So for quasi-public corporations. McCarter v. Firemen's Insurance Co., 74 N. J. Eq. 372, 73 Atl. 80, 82 (1909). For the effect of statutory regulation upon the "voluntary" character of political parties see a similar contradiction of views: People v. Democratic General Committee, 164 N. Y. 335, 58 N.E. 124, 126 (1900); Attorney General v. Drohan, 169 Mass. 534, 48 N.E. 279, 281 (1897).

[62] L. Duguit, *Law in the Modern State* (Laski's trans.), 44–5 (1919). See also G. Cohn, *Science of Finance* (Veblen's trans.), 58–76 (1895).

[63] Dartmouth College v. Woodward, 4 Wheat, 518, 4 Law. ed. 629, 635 (1819); Neal v. Vansickle, 72 Neb. 105, 100 N.W. 200, 201 (1904).

[64] Board of Education of Illinois v. Bakewell, 122 Ill. 339, 10 N.E. 378, 383 (1887).

[65] Trustees of Exempt Firemen's Fund v. Roome, 93 N. Y. 313, 321 (1883).

[66] University of North Carolina v. Maultsby, 43 N. C. 257, 264 (1852).

conditions are private, the powers vested in the person who bears it more particularly regard persons determined specifically; when public, those powers more particularly regard the public considered indeterminately."[67] Thus all the distinctions invented in this connection appear to be distinctions without a fundamental difference.

Because he could find no essential distinction between "private conditions" and "political conditions," Austin,[68] following Hale[69] and Blackstone,[70] repudiated the classical division of all law into "public law" and "private law," and classified "political subordinates" under the "law of persons." This division is as old as the Roman law.[71] "The study of law consists of two branches, law public and law private. The former relates to the welfare of the Roman state, the latter to the advantage of the individual citizen."[72] Although this has been generally accepted, it may be justified more as "a convenient method of arranging the topics of law for the purpose of discussion" than as based upon any fundamental principle.[73]

[67] *Jurisprudence* (4th ed.), II, 748. But note the distinction between a public trust and a private trust. J. N. Pomeroy, *Equity Jurisprudence* (3rd ed.), III, 1932–3 (1905).

[68] *Jurisprudence* (4th ed.), I, 67–72; II, lect. 44.

[69] *Analysis of the Civil Part of Law*, sec. 2.

[70] *Commentaries*, bk. 1, ch. 1.

[71] "There is a two-fold division of actions relatively to the persons affected by them. Actions proper to be done or left undone may have reference either to the community or to some individual member of it. And accordingly just and unjust actions may be also of two kinds, referring either to a particular individual or to the community." Aristotle, *Rhetoric* (Welldon's trans.), 94.

[72] Justinian, *Institutes* (Moyle's trans., 4th ed.), 3. "*Hujus studii duae sunt positiones, publicum et privatum. Publicum jus est, quod ad statum rei Romanae spectat, privatum, quod ad singulorum utilitatem pertinet.*" *Imperatoris Justinian, Institutiones* (Moyle's 4th ed.), lib. 1, tit. 1.

[73] W. Markby, *Elements of Law* (6th ed.), 151–2 (1905). "The opposed terms public and private law tend . . . to generate a complete misconception of the real ends and purposes of law. Every part of the law is in a certain sense public, and every part of it is in a certain sense private also. There is scarcely a single provision of the law which does not interest the public and there is not one which does not interest, singly and individually, the persons of whom that public is composed. . . . Public law . . . is not distinguishable from any other portion of internal law by its final cause: *viz.* the good of the public. . . . By 'the public' (where it means anything) we mean all the individuals

These considerations have more than an academic importance. For a general appreciation of the truth that there is no fundamental distinction between "public" agencies and "private" agencies would do much to remove confusion and prejudice, due in some measure to legalistic conceptions, in present-day controversies over the proper relations between the various units of the social organization.[74]

who compose the community, governors as well as governed. In which sense of the word public, all law is public; whether we look to the persons in whom rights or obligations reside, or whether we look to what is, or at least ought to be, the end of law—that end being the good of all." Austin, *Jurisprudence* (4th ed.), II, 750, 756–7. See also A. Friedlander, in Puchta, etc., *Outlines of Jurisprudence* (Hastie's trans.), 143–4 (1887); N. M. Korkunov, *General Theory of Law* (Hastings' trans.), 232–3 (1909). *Contra:* H. T. Terry, *Some Leading Principles of Anglo-American Law*, 619–23 (1884); F. Pollock and F. W. Maitland, *History of English Law*, I, 230–1 (1903); A. A. Mitchell, in *Juridical Review*, XVII, 30–42 (1905); T. E. Holland, *Jurisprudence* (11th ed.), 124–32 (1910). The situation seems no better when the distinction is somewhat qualified, as in G. Bowyer, *Commentary on Universal Public Law*, 107–110, 347–8 (1854), and F. Pollock, *First Book of Jurisprudence*, (2nd ed.), 92, 96–7 (1904). On this see Austin, *Jurisprudence* (4th ed.), II, 750.

[74] Cf. G. H. Sabine, in 39 *Philosophical Review*, 312–3 (1920).

CONSTITUTIONAL LAW IN 1922–1923

THE CONSTITUTIONAL DECISIONS OF THE SUPREME COURT OF THE UNITED STATES IN THE OCTOBER TERM, 1922

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A. QUESTIONS OF NATIONAL POWER

I. THE NATIONAL SPENDING POWER: THE MATERNITY ACT

The opening paragraph of Section 8 of Article 1 of the Constitution reads as follows: "Congress shall have power to lay and collect taxes . . . . to pay the debts and provide for the common defense and general welfare of the United States." For what purposes may Congress, in light of this phraseology, spend money raised by national taxation? Hamilton answered, for any purposes which Congress itself found to be promotive of the general welfare. Madison, on the contrary, held the power thus granted to be only instrumental—Congress might spend money only as a means of carrying into effect its other granted powers. So far as the practice of Congress is concerned, Hamilton's view has long since prevailed, but the Supreme Court has never had occasion so far to develop its theory on the subject. Its failure, therefore, to seize the opportunity proferred it in the Maternity Act cases is somewhat disappointing.[1]

By the Maternity Act of November 23, 1921[2] Congress extends financial aid, in the work of reducing maternal and infant mortality, and protecting the health of mothers and infants, to such states as shall accept and comply with the provisions of the act. The act was attacked on two grounds; first, that the appropriations voted were "for purposes not national, but local to the states," and secondly, that the acceptance

[1] On the merits of this question see the present writer's "The Spending Power of Congress—Apropos the Maternity Act," in 36 *Harvard Law Review*, 548–582; also the admirable brief in the Maternity Act cases by Solicitor General Beck and the Attorney General's Assistant, Mr. Robert P. Reeder.

[2] 42 Stat. L. 224.

by a state of the terms of the act would constitute a surrender by it of its reserved powers. In Massachusetts vs. Mellon,[3] which was an original suit, Massachusetts based an application for an injunction forbidding the secretary of the treasury to carry out the act, on the ground that not only was its own sovereignty menaced, but that it was also entitled to intervene in behalf of such of its citizens as were taxpayers to the national government; but a unanimous court, speaking through Justice Sutherland, rejected both propositions. Pointing to the fact that Massachusetts had not yet complied with the act, he said: "In the last analysis the complaint of the plaintiff state is brought to the naked contention that Congress has usurped the reserved powers of the several states by the mere enactment of the statute, though nothing has been done and nothing is to be done without their consent; and it is plain that that question, as it is thus presented, is political and not judicial in character, and therefore is not a matter which admits of the exercise of the judicial power." Whether this means that Massachusetts was not entitled to relief because none of her rights were really threatened or because the rights for which she sought protection were political merely and not within the range of judicial power, is a bit uncertain; but other expressions in the opinion make the former the more probable interpretation.

Passing then to consider whether the suit was maintainable "by the state as the representative of its citizens," Justice Sutherland further says: "While the state under some circumstances may sue in that capacity for the protection of its citizens, it is no part of its duty or power to enforce their rights in respect of their relations with the federal government. In that field it is the United States and not the state which represents them as *parens patriae*, when such representation becomes appropriate; and to the former, and not to the latter, they must look for such protective measures as flow from that status." In other words, state power does not comprehend the right, claimed in the Virginia and Kentucky Resolutions, to interpose the aegis of the state's sovereignty between its citizens, who are also citizens of the United States, and the alleged oppressive acts of the latter.

What protection then may the citizen seek on his own account against an alleged unconstitutional appropriation of money from the national treasury? This was the question raised in Frothingham vs. Mellon,[3] in which plaintiff besought the court to intervene in her behalf as a taxpayer, but the answer returned by the court was, in effect, that

[3] 262 U. S. 447.

no remedy of a judicial nature was available. Weighing the public interest involved against the private, the court held the latter to be too inconsiderable to authorize its intervention. "If," said Justice Sutherland, "one taxpayer may champion and litigate such a cause then every other taxpayer may do the same, not only in respect to the statute here under review, but also in respect to every other appropriation act and statute whose administration requires the outlay of public money and whose validity may be questioned." The bare suggestion of such a result, he continued, with its attendant inconveniences, went far to sustain the conclusion that such a suit could not be maintained, nor in fact was there any precedent authorizing such a suit, "although since the formation of the government . . . . a large number of statues appropriating or involving the expenditure of monies for non-federal purposes have been enacted and carried into effect."

Altogether, the decision seems to demonstrate that an appropriation of national funds is not, as such, subject to be questioned judicially, though no doubt the constitutional question might be raised collaterally in a case involving an assertion of national jurisdiction in conjunction with an appropriation. In other words, so long as Congress proceeds with due discretion, it is for it, and not the Supreme Court, to say finally what is that "general welfare" for which money may be spent by the national government; and this, of course, is just where on principle such a power ought to rest.

II. REGULATION OF COMMERCE

1. The Grain Futures Act

In Board of Trade vs Olsen[4] the act of September 21, 1922[5] forbidding trading in grain futures except, generally speaking, under the supervision of the secretary of agriculture, was sustained. The act was attacked on the ground that such trading was not interstate commerce and only remotely affected such commerce, and also on the basis of Hill vs. Wallace,[6] which was decided last term. The latter case was distinguished from the one at bar on the ground that the act of Congress there involved did not invoke the commerce power but was an attempt

[4] 262 U. S. 1.

[5] 42 Stat. L. 998.

[6] 259 U. S. 44. For comment see the present writer in this *Review*, vol. 16, at page 617.

by Congress to impose penalties in the guise of taxation. The main proposition of appellants was answered in two ways: In the first place, the court cited certain precedents, notably Stafford vs. Wallace,[7] in which the right of Congress to regulate the Chicago stockyards was sustained at the last term of court, but more particularly Swift and Company vs. United States,[8] of which the court, speaking through the Chief Justice, remarks: "That case was a milestone in the interpretation of the commerce clause of the Constitution. It recognized the great changes and development in business of this vast country, and drew again the dividing line between interstate and intrastate commerce where the Constitution intended it to be. It refused to permit local incidents in the great interstate movement, which taken alone were intrastate, to characterize the movement as such. The Swift Case merely fitted the commerce clause to the real and practical essence of modern business growth."

But the court does not pause with establishing the general proposition of the integral relation of the transactions governed by the act before it with interstate commerce. It also enters upon an elaborate review of the testimony on which Congress had based its finding, that trading in grain futures was detrimental alike "to producers, consumers, and legitimate dealers in grain in interstate commerce;" whereupon it concludes that it "would be unwarranted in rejecting the finding of Congress" to this effect as "unreasonable." The decision is, therefore, not based on the conventional presumption of the validity of Congress' acts within the field of its jurisdiction, but upon a finding of fact by the court itself. This procedure certainly raises an important question of constitutional law, and it is not remarkable that it has not passed without notice.[9] At the same time, however, it must be owned that it represents a method of approach to constitutional questions decidedly preferable to that which has come to be taken in another class of cases, as we shall note below in connection with the Minimum Wage Case.

There is another feature of this decision which demands emphasis. The point can be made clear by a brief historical reference. In Gibbons vs. Ogden,[10] Chief Justice Marshall, without in the least intending to question that commerce is primarily traffic, that is to say buying and selling, insisted that in the constitutional sense it also included naviga-

[7] 258 U. S. 495; and this *Review*, *loc. cit.* pp. 619–620.
[8] 196 U. S. 375.
[9] 37 *Harvard Law Review*, pp. 136–140.
[10] 9 Wheat. 1.

tion, or more broadly, transportation. From that day to this there has been a tendency, oftentimes dominant in the court, to define commerce as merely transportation, and to regard the act of transportation as the exclusive subject matter of Congress' power, a point of view which explains the court's calamitous error in the Sugar Trust Case,[11] whereby the Sherman Act was rendered valueless during the very period when it should have proved most effective in the prevention of the formation of industrial trusts. In the Swift Case, cited by Chief Justice Taft in the case at bar, the court, under the leadership of Justice Holmes, turned sharply away from the fallacies of the earlier decision, and in recognizing "the course of the business" as the true subject matter of Congress' power, restored the Sherman Act to something like its intended place on the statute book; and now Chief Justice Taft's opinion in the present case carries the good work a step farther. "The question of price," says he, "dominates trade between the states." The logical conclusion is that Congress, in turn, can dominate the question of price—that any practice which materially affects the price of articles extensively dealt in among the states falls within Congress' regulatory power. With this doctrine before it, Congress can not plead with any show of conviction lack of constitutional power to deal effectively with the anthracite coal situation.[12]

[11] United States vs. E. C. Knight Co., 156 U. S. In this case the Court says that "Contracts to buy, sell, or exchange goods to be transported among the several states, the transportation and its instrumentalities," etc. "may be regulated, but this is because they form part of interstate trade or commerce." It then proceeds to hold, on the authority of Coe vs. Errol, 116 U. S. 517, that the power of Congress does not begin to operate until the commodity commences its "final movement" from the state of origin to that of destination. All that Coe vs. Errol really stands for is that the state may tax until this final movement begins but not afterward. It has been held repeatedly since that case that the line which limits the power of the state in relation to interstate commerce from one side does not limit Congress' power from the other. This follows from the fact that Congress may pass all laws "necessary and proper" to make its enumerated powers effective and that such laws are supreme over any conflicting state laws. See especially the Shreveport Case, 234 U. S. 342.

[12] Justices McReynolds and Sutherland dissented, without opinion. In Russell Motor Car Co. vs. U. S. note 30 *infra*, which was decided a week earlier, Justice Sutherland seized the opportunity to state *obiter* that, although "the power to regulate interstate and foreign commerce is found in the same clause and conferred by the same words," "the scope of the power, when applied to the former may be narrower than when applied to the latter." For this rather dark saying is cited Groves vs. Slaughter, 15 Pet. 449, 505, which was decided before the Civil War and by a bench anxious to throw all possible safeguards around

2. The Transportation Act of 1920

Several cases involved the Transportation Act of 1920, in the first of which the sections establishing the railroad labor board were sustained and given a liberal construction.[13] The board may determine who are proper representatives of employees to confer with employers. It is a board of arbitration designed, not to determine the legal rights of the parties to the disputes brought before it, but to arrive at a fair compromise between them as to the exercise of those rights; and it is authorized to invoke the sanction of public opinion to the support of its conclusions. Following in the track of results reached the last term of court, another case informs us that the authority conferred by the act upon the interstate commerce commission when it is making a division of rates between connecting carriers, to take into account the importance to the public of the service of such carriers, enables it to make the division with a view to relieving the financial necessities of particular lines, and is not void as depriving other carriers of property without due process of law so long as the share which is left is sufficient to avoid confiscation.[14] By a third case the commission may order up intrastate rates on commodities which are carried for the national, state or municipal authorities, where such rates discriminate against interstate commerce.[15]

III. LEGISLATIVE POWER IN THE DISTRICT OF COLUMBIA: THE MINIMUM WAGE ACT

In Adkins vs. Children's Hospital,[16] the Court, by a vote of five to three, Justice Brandeis not sitting, disallowed the Act of September 19, 1918,[17] establishing standards of minimum wages for women and children in all occupations in the District of Columbia, so far as the act

slavery; and it has been repeatedly contradicted since. See, e.g., Brown vs. Houston, 114 U. S. 622; and Bowman vs. Chic. & N. W. R. Co., 125 U. S. 465. The idea, however, was a favorite one with the late Chief Justice White (see, e.g. Buttfield vs. Stranahan, 192 U. S. 470), and is a part of the arsenal of judicial obscurantism whereby the legislation against child labor was overthrown in Hammer vs. Dagenhart, 247 U. S. 251. In connection with the instant case see also the Chief Justice's opinion in United Mine Workers of Am. vs. Coronado Coal Co., 259 U. S. 344, at pp. 407–412.

[13] Penn. R. Co. vs. U. S. Railroad Labor Bd., 260 U. S. 718.

[14] The New England Divisions Case, 261 U. S. 184.

[15] Nashville, C. & St. L. R. vs. Tenn., 262 U. S. 318.

[16] 261 U. S. 525.

[17] 40 Stat. L. 960.

applied to the case of women. The ground of the decision was that the act violated the freedom of contract, as well as rights of property, protected by the due process clause of the Fifth Amendment. The court's approach to the question presented is indicated in the following words from Justice Sutherland's opinion: "There is, of course, no such thing as absolute freedom of contract. It is subject to a great variety of restraints. But freedom of contract is, nevertheless, the general rule and restraint the exception; and the exercise of legislative authority to abridge it can be justified only by the existence of exceptional circumstances." Justice Sutherland then proceeds to classify the decisions which have sustained legislative interference with freedom of contract under the following headings: "First, those dealing with statutes fixing rates and charges to be exacted by businesses impressed with a public interest"; "secondly, statutes relating to contracts for the performance of public works"; "thirdly, statutes prescribing the character, methods, and time of payment of wages"; "fourthly, statutes fixing hours of labor. It is upon this class," he continues, "that the greatest emphasis has been placed in argument," and he might have added that it is this class which confronts him with his most difficult task in exegesis. The issue raised, in brief, is whether Lochner vs. New York,[18] in which a ten-hour law for bakeries was set aside several years ago, is to be regarded as having been overturned by the more recent decision in Bunting vs. Oregon,[19] in which a general ten-hour law for factories was sustained. Justice Sutherland contends not, arguing that the statute involved in the later case "was sustained on the ground that, since the state legislature and state supreme court had found such a law necessary for the preservation of health of employees in these industries, this Court would accept their judgment, in the absence of facts to support the contrary conclusion."

But what does Justice Sutherland mean by thus invoking the opinion of the state legislature and the state supreme court? Does he mean that if the court were confronted with a state minimum wage act vested with a like sanction, it would sustain it? If so, what becomes of his demand at the outset of the opinion that such legislation is to be justified only by "the existence of exceptional circumstances"—which means, it seems clear, exceptional circumstances of which the court can take cognizance, as for instance, the special hazards of mining coal under ground? The truth of the matter is that Lochner vs. New York and Bunting vs.

[18] 198 U. S. 45.
[19] 243 U. S. 426.

Oregon represent two entirely opposed points of view, Justice Sutherland's assertion to the contrary notwithstanding. Whereas Lochner vs. New York says in effect that a statute which invades freedom of contract is not to be sustained unless there are facts of which the Court can take cognizance showing its tendency to support the public health, Bunting vs. Oregon says that such a statute must be sustained unless there are facts of which the court can take cognizance showing the contrary. Nor are Justice Sutherland's difficulties lessened when he turns to consider Muller vs. Oregon[20] and succeeding cases in which legislation restrictive of hours of labor for women was sustained in view of their physical weakness and their maternal function. For granting that restrictions upon freedom of contract must be justified by "exceptional circumstances" of which the court can take cognizance, these are facts of which it has taken cognizance repeatedly; and if in former cases, why not in this? Justice Sutherland's only answer is to point to the Nineteenth Amendment, but in the words of Chief Justice Taft, in his dissenting opinion: "The Nineteenth Amendment did not change the physical strength or limitations of women upon which Muller vs. Oregon rests."

Is it true, however, that hour-laws and wage-laws rest on the same basis constitutionally? Chief Justice Taft and Justice Holmes contend in effect that they do; but Justice Sutherland's argument to the contrary is fairly convincing from the point of view of precedent: "A law forbidding work to continue beyond a given number of hours leaves the parties free to contract about wages and thereby equalize whatever additional burdens may be imposed upon the employer as a result of the restrictions as to hours, by an adjustment in respect of the amount of wages." Thus the very fact that hour-legislation has been accepted in principle by the court, makes legislative regulation of wages a more formidable, because less easily avoided, restriction of contract. Furthermore, to quote again from the opinion: "This Court has been careful in every case where the question has been raised, to place its decision upon this limited authority of the legislature to regulate hours of labor, and to disclaim any purpose to uphold the legislation as fixing wages, thus recognizing the essential difference between the two."[21] In short, the Minimum Wage Act did present the court a novel

[20] 208 U. S. 412 see also Riley vs. Mass., 232 U. S. 671; Miller vs. Wilson, 236 U. S. 373; and Bosley vs. McLaughlin, 236 U. S. 385.

[21] Both Bunting vs. Ore., *supra*, and Wilson vs. New, 243 U. S. 332 bear out J. Sutherland's contention on this point.

question and one the serious bearing of which had been previously acknowledged, at any rate in implication. And so we are brought back to Justice Sutherland's original assertion that such an extraordinary exercise of legislative authority, and one so obviously restrictive of previously enjoyed liberty, "can be justified only by the existence of exceptional circumstances." Here, again, Justice Sutherland would seem to have the weight of precedent with him. While slight restraints on liberty and property, or restraints which merely extend or modify principles of the common law have always been sustained unless clearly capricious or arbitrary, yet ever since Mugler vs. Kansas,[22] recognizably novel restraints have usually been viewed in a very different light. In the case just mentioned, as in Holden vs. Hardy,[23] such restraints were sustained, it is true, but on the basis of facts of which the court could take cognizance showing their justification, while in Lochner vs. New York and Coppage vs. Kansas,[24] justificatory facts of such notoriety lacking, the legislative enactments involved were disallowed.

The fundamental question for constitutional law suggested by the Minimum Wage Case is, therefore, whether the court, in raising the question of reasonable justification of a statute in relation to the due process of law clause, is entitled straightway to close its ears to most of the sources of an informed answer thereto, by confining its judicial cognizance to facts so notorious that even a court may be presumed to know them without proof. It is submitted that there is no sound reason why the court should stuff cotton in its ears in this way. If it was entitled, in Board of Trade vs. Olsen, to quote views of Messrs. Hoover, Barnes and others, as showing the necessity and propriety of an act of Congress asserted to have been passed to protect commerce among the states, why should it not be equally free in canvassing the question of the "reasonableness" of an enactment alleged to be promotive of the public health, the public morals, and so forth?

But perhaps minimum-wage legislation is intrinsically unconstitutional, representing an invasion of rights which are absolutely protected against legislative power. At least Justice Sutherland suggests as much toward the close of his opinion, where after pointing out what he con-

[22] 123 U. S. 623.

[23] 169 U. S. 366, sustaining a Utah statute which restricted the hours of labor in mines and smelters.

[24] 236 U. S. 14, overturning a Kansas statute which forbade employers to require their employees to agree not to join a labor union.

siders to be insurmountable difficulties in the way of a fair administration of such a measure, he continues; "The feature of this statute which, perhaps more than any other, puts upon it the stamp of invalidity is that it exacts from the employer an arbitrary payment for a purpose and upon a basis having no causal connection with his business, or the contract, or the work the employee engages to do. The declared basis, as already pointed out, is not the value of the service rendered, but the extraneous circumstance that the employee needs to get a prescribed sum of money to insure her subsistence, health and morals." Such an act he compares with one which should "vest in a commission power to determine the quantity of food necessary for individual support and require the shopkeeper, if he sells to the individual at all, to furnish that quantity at not more than the fixed maximum", and stigmatizes as "clearly the product of a naked, arbitrary exercise of power that it can not be allowed to stand under the Constitution of the United States."

The view that the Constitution recognizes certain rights of the individual as morally beyond the reach of governmental power is historically incontestable; but it should be noted that it cannot be logically appealed to except in such cases as are beyond the reach of constitutional amendment no less than of ordinary legislative power. For if a power can be vested in a legislature, it may have been, which simply raises again the question, under the due process clause, of reasonable justification. In short, if Justice Sutherland's argument holds, even a constitutional amendment purporting to authorize minimum-wage legislation must be reckoned by the premises of that argument as amounting to a constitutional revolution.[25]

IV. THE EIGHTEENTH AMENDMENT AND THE VOLSTEAD ACT

In Cunard Steamship Company vs. Mellon,[26] which was argued at the same time with eleven other cases decided at the same time, it was held that the word "territory" is used in section 1 of the Eighteenth Amend-

[25] The opinion contains a number of points which do not seem to bear very directly upon the constitutional question. As a good Calvinist, J. Sutherland holds that "Morality rests upon other considerations than wages . . . . . if women require a minimum wage to preserve their morals, men require it to preserve their honesty"—all of which must be admitted to be pretty good debating, whether it was good law before his Honor spoke, or not.

[26] 262 U. S. 100.

ment[27] in its literal sense, and so does not cover domestic merchant ships outside of the waters of the United States, but does cover foreign merchant ships when within those waters; also, that the word "transportation" in the same section "comprehends any real carrying about or from place to place;" also, that the Volstead Act is for the most part coextensive in these respects with the Eighteenth Amendment.

The inapplicability of the amendment to American merchantmen on the high seas is hardly open to question. The word "territory" of the amendment means territory into which "importation," from which "exportation," within which "manufacture" may not take place. The application of the amendment to foreign merchantmen lying in American waters is, on the other hand, decidedly open to question. As Justice Sutherland points out in his dissent on this point, "Interference with the purely internal affairs of a foreign ship is of so delicate a nature, so full of possibilities of international misunderstanding, and so likely to invite retaliation, that an affirmative conclusion in respect thereof should rest upon nothing less than the clearly expressed intention of Congress to that effect." In addition to international comity Justice Sutherland might well have urged in support of his protest the "rule of reason." For as the result of the court's holding, while the ordinary criminal law does not apply to foreign vessels in American waters unless "the peace of the port" is disturbed, the Volstead Act forbids such a vessel, on pain of confiscation, to have on board, even though under lock and seal, a single pint of beverage of one-half of one per cent alcoholic content. True, the court invokes the provision of the act that it is to be "liberally construed to the end that the use of intoxicating beverages may be prevented." But their "use" where? The Eighteenth Amendment itself says, in "the United States and all territories subject to the jurisdiction thereof,"—not in the middle of the Atlantic Ocean.

The question has recently arisen whether a treaty which exempted foreign merchantmen from the Eighteenth Amendment and the Volstead Act would be constitutional in light of this decision. It is true that the court treats the act as coextensive with the amendment, for the most part; yet it also refers without apparent disapproval to the section of the act which permits the transit of liquors through the Panama

[27] "After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, the exportation thereof from the United States and all territories subject to the jurisdiction thereof for beverage purposes is hereby prohibited."

Canal Zone, while in other cases it has sustained a provision of the act which allows under special permit the removal, that is to say the "transportation,"[28] of liquor acquired before the amendment went into effect. There is certainly nothing in the amendment that would prevent Congress from repealing the Volstead Act in whole or in part; nor does the first section put any obligation on Congress as a body to exercise the power conferred by the second section, except such obligation as results to it from the moral obligation of its members to maintain and support the Constitution. Yet even if this contention be questioned, still any specific treaty or statutory provision ought always to be regarded in its relation to the whole scheme of legislation which the law-making authority has devised for the enforcement of prohibition; otherwise Congress would be deprived of an unhampered choice of the best means of enforcement—that is to say, the amendment would be self-defeating. The only fair question which could be raised as to a treaty provision exempting foreign merchantmen from the operation of the Volstead Act in return for a freer hand in dealing with rum-runners would be whether such a provision aided or hindered enforcement,—and that is hardly a judicial question. Finally, it is possible that the rule which the Volstead Act lays down for its interpretation indicates that the word "transportation" is used in the act in a more rigorous sense than it is in the amendment. If this is so, then obviously the act could be mitigated in this respect.

The case of the United States vs. Lanza[29] establishes the proposition that the double jeopardy clause of the Fifth Amendment does not prevent a prosecution by the national government under the Volstead Act for acts which have already been punished under a state statute for the enforcement of prohibition. The decision rests securely enough on

[28] See especially Street vs. Lincoln Safe Deposit Co., 254 U. S. 88. This conditional immunity extends also to liquor acquired by inheritance or bequest since the amendment went into effect. In this connection it should be noted that liquors brought into our waters by a foreign merchantman are ordinarily lawfully acquired under the laws of the country of the vessel's flag. Perhaps it would have been better for the court to hold that "transportation," at least as to such liquors, is not simply "carrying about," but carrying about with the immediate intention of effecting a transfer. This idea is certainly hinted in the Street Case *supra*, but was abandoned in Anchor Line vs. Aldridge, 259 U. S. 80. It should also be pointed out that the Court's view of what constitutes an "importation" in the case at bar represents a wide departure from Chief Justice Marshall's view in Brown vs. Md., 12 Wheat. 419.

[29] 260 U. S. 377. See also Fox vs. Ohio, 5 How. 410; U. S. vs. Marigold, 9 How. 560; and McKelvey vs. U. S. in the next note.

the doctrine that the Fifth Amendment applies only to federal proceedings, but Chief Justice Taft also invokes for it the old "dual sovereignty" theory of the relation of the national government and the states, in which connection he offers the puzzling suggestion that in enforcing prohibition the states are still only exercising their police power. A rather lopsided police power, one would say![30]

V. NATIONAL JUDICIAL POWER

The court had occasion to express itself on this subject in an unusual number of cases, of which the Maternity Act cases have already been reviewed. Other results worth noting are the following: The Constitution does not vest jurisdiction in the lower federal courts over the designated cases and controversies, but only delimits those in respect

[30] The following cases involving questions of national power demand only brief reference: Gain accruing to a stockholder by the reorganization of a corporation is sufficiently segregated to permit its taxation as "income" by a dividend in liquidation of the original company, Cullinan vs. Walker, 262 U. S. 134, citing U. S. vs. Phellis, 257 U. S. 156; and Rochefeller vs. U. S., *ibid.* 176. Although a penalty cannot be imposed in the guise of a tax, without notice or hearing, for the alleged sale of intoxicating liquors, Regal Drug Co. vs. Wardell, 260 U. S. 386 citing Lipke vs. Lederer, 259 U. S. 557; failure to list outlawed goods in a manifest may be penalized, U. S. vs. Sischo, 262 U. S. 165; as may also the purchase of narcotic liquors except under conditions designed to make the revenue laws effective, U. S. vs. Wong Sing, citing U. S. vs. Doremus, 249 U. S. 86. The power of Congress to govern through rates may not be defeated by a contract between shipper and carrier whereby goods destined for points outside a state are consigned to intermediate points, B. & O. S. W. R. Co. vs. Settle, 260 U. S. 166; nor its power to regulate the use of passes in interstate commerce be in anywise controlled or limited by state laws, Kansas City So. R. Co. vs. Van Zant, 260 U. S. 459. Congress may in time of war authorize the President to modify private contracts, leaving the parties free as between themselves to accept, and this power extends to contracts to which the government itself is party, Russell Motor Car Co. vs. U. S. 261 U. S. 514. The priority given the United States by Revised Statutes, 3466, in the assets of insolvent debtors cannot be impaired by state law, United States vs. Okla, 261 U. S. 253, citing United States vs. Fisher, 2 Cranch 308, and other cases. Congress may penalize obstruction of free passage over public lands of the United States, although the same acts of personal violence fall also within the police power of the state, McKelvey vs. U. S. 260 U. S. 353, citing Moore vs. Gee, 14 How. 13. Congress had the power within a territory of the United States to grant the beds of nonnavigable rivers to private owners, and the vested rights thus created cannot be divested by a declaration by the state formed from the territory that the river is navigable, Brewer-Elliott Oil & Gas Co. vs. U. S. 260 U. S. 77, citing Snively vs. Bowlby, 152, U. S. 1.

to which Congress may at its discretion confer jurisdiction.[31] Congress has not power to confer on the Supreme Court the determination, on appeal from the courts of the District of Columbia, of questions of fact involved in the setting of rates by the public service commission of the district, the establishment of a rate for the future being a legislative and not a judicial question;[32] nor may the court proceed to the adjudication of a cause which no longer exists and its determination of which would be ineffectual.[33] The forbearance practiced by the courts of the United States and of the states toward each other, whereby conflicts are avoided, is not merely a principle of comity, but "of right and law;"[34] and in consequence a non-resident in attendance on an action in a state court is immune from federal process.[35] The Supreme Court follows the highest state court in the construction of state statutes, but not in its characterization of the constitutionality of such statutes in relation to the Constitution of the United States.[36] In the absence, however, of any contrary construction of a state statute by the state courts, the Supreme Court will, if possible, construe such statute in a way to render it constitutional.[37] Section 3224 of the Revised Statutes, which provides that "no suit for the purpose of restraining the assessment or

[31] Kline vs. Burke Construction Co., 260 U. S. 226. This is contradictory of Justice Story's argument in Martin vs. Hunter's Lessee, 1 Wheat. 304, that Congress was under constitutional obligation to vest in courts of the United States all of the jurisdiction delimited by Article III, Sec. 2.

[32] Keller vs. Potomac Electric Power Co., 261 U. S. 428. Such jurisdiction is conferable on the district courts by virtue of Congress' "dual authority over the District," citing Butterworth vs. U. S. 112 U. S. 50; and United States vs. Duell, 172 U. S. 576.

[33] Brownlow vs. Schwartz, 261 U. S. 216.

[34] Kline vs. Burke Construction Co., *supra*, citing Covell vs. Heyman, 111 U. S. 176, where it is said further: "These courts do not belong to the same system so far as their jurisdiction is concurrent; and although they coexist in the same space, they are independent, and have no common superior." If this means that Congress' power under the necessary and proper clause in relation to the judicial powers of the United States is restricted by "the principle of forbearance," it is obviously in conflict with Cohens vs. Va., 6 Wheaton, 264; nor does the Ponzi Case, 258 U. S. 254, cited by Justice Sutherland in this connection, suggest the contrary. See also United States vs. Okla., note 30 *supra*.

[35] Page Co. vs. MacDonald, 261 U. S. 446. Conversely, books and papers in possession of a bankruptcy court cannot be taken therefrom by subpoena of a state court, except upon consent of the federal court, Dier. vs. Banton, 262 U. S. 147, citing Ponzi vs. Fessenden, *supra*.

[36] St. Louis Cotton Compress Co. vs. Ark. 260 U. S. 346.

[37] So. Utah Mines & Smelters vs. Beaver County, 262 U. S. 325.

collection of any tax shall be maintained in any court," will not prevent the issuance of an injunction against the enforcement of illegal penalties in the form of a tax—a holding which clearly subordinates the maxim that an act of Congress is to be regarded as constitutional until it is shown to be otherwise, to the theory of "inherent" judicial power.[38] On the other hand, Section 266 of the Judicial Code, forbidding a single judge to grant an injunction against the enforcement of rates under the authority of a state statute, is to be given a liberal construction.[39] The writ of habeas corpus is not to be used as a writ of error unless the question of jurisdiction is involved, nor may a court not exercising appellate jurisdiction impeach collaterally the proceedings of a court of general and competent jurisdiction—a holding which seems to have anticipated the recent Craig case.[40]

VI. EMINENT DOMAIN; SEARCHES AND SEIZURES; EXPORTS

The just compensation provision of the Fifth Amendment is not suspended by war, but requires that the owner of property which is taken for war purposes be paid the market price prevailing at the time

[38] Graham vs. Dupont, 262 U. S. 234, citing Lipke vs. Lederer and Regal Drug Co. vs. Wardell, note 30 *supra*. The opinion also condones evasion of Sec. 3224 by moot cases instituted by stockholders against corporations to restrain the latter from paying taxes alleged to be unconstitutional, instances being Pollock vs. Farmers' Loan & T. Co., 157 U. S. 429, and Brushaber vs. Un. Pac. R. Co., 240 U. S. 1.

[39] Cumberland Tel. & Tel. Co. vs. La. Pub. Serv. Com'n, 260 U. S. 212; Okla. Nat. Gas Co. & Russell, 261 U. S. 290. But pending an appeal to a state supreme court regarding the constitutionality of rates, a public service corporation is entitled to a temporary injunction from the United States district court, proceeding in accordance with Sec. 266, *ibid:* and see also Prendergast vs. N. Y. Telephone Co., 262 U. S. 43.

[40] Riddle vs. Dycke, 262 U. S. 333. Three other cases demand only passing notice: Great Lakes Dredge & Dock Co. vs. Kierejewski, 261 U. S. 479, enforcing the principle of the exclusiveness of the admiralty jurisdiction as laid down in the Jensen Case, 244 U. S. 205; Pusey & Jones Co. vs. Hanssen, reiterating the doctrine of Scott vs. Neely, 140 U. S. 106 that a remedial right to proceed in a federal court sitting in equity may not be enlarged by state statute; and Toledo Scale Co. vs. Computing Co., 261 U. S. 399, which holds that, "to justify punishment as for contempt of court of a defeated party to a suit, who merely undertakes to enjoin in another court the successful party to prosecuting his decree to payment, the circumstances of disrespect to the court entering the decree should be unusual."

and place of the taking.[41] The government is not required to reimburse a company for outlays made in preparing to fulfill a contract with it,[42] nor for loss inflicted through inability to fulfill a contract in consequence of a requisitioning of its product. "If a contract or other property is taken for public use, the government is liable; but if injured or destroyed by lawful action, without a taking, the government is not liable."[43] Nevertheless, the government in repeatedly firing guns across a piece of land imposed a servitude thereupon which constitutes a taking of it, and implies a contract to pay for it within the meaning of the Tucker Act.[44] The provision of the Lever Act that if an owner whose property was requisitioned by the President was not satisfied with the price offered, he could be paid a certain percentage and sue for the balance, may not be interpreted to prevent similar suits by owners who have received the full amount awarded by the President.[45]

A bankrupt whose papers have passed through a trustee cannot prevent their use as evidence against himself in criminal proceedings. "His privilege secured to him by the Fourth and Fifth Amendments . . . . is that of refusing himself to produce as incriminating evidence against him anything which he owns or has in his possession and control; but his privilege in respect to what was his and in his custody ceases" on a legal transfer of control and possession.[46] An officer of a corporation having in his custody books and paper may not object to the production of the corporate records because they may disclose his guilt, inasmuch as he holds them not in a private capacity but in a representative capacity.[47] The provision in the Fifth Amend-

[41] United States vs. New River Collieries Co., 262 U. S. 341; and Vogelstein Co. vs. U. S. 262 U. S. 337. See also, to same effect, Seaboard Air Line Co. vs. U. S. 261 U. S. 299.

[42] Duesenberg Motors Corp. vs. U. S., 260 U. S. 115.

[43] Omnia Com'l Co. vs. U. S., 261 U. S. 502. See also Price Fire & Water Proofing Co. vs. U. S., 261 U. S. 179.

[44] Portsmouth Land & Hotel Co. vs. U. S., 260 U. S. 327. There was a strong dissent, based on a different version of the facts. The case may turn out to be a notable one in the extension it suggests of "contracts implied in fact" on which the United States consents to be sued under the act, Sec. 24 of the Judicial Code, Par. 20.

[45] Houston Coal Co. vs. U. S., 262 U. S. 361, interpreting Sec. 10 of the Act of August 10, 1917, 40 Stat. L. 276.

[46] Re Fuller, 262 U. S. 91; Dier vs. Banton, 262 U. S. 147. These cases only apply results recently arrived at. See this *Review*, vol. 16, pp. 228–229.

[47] Essgee Co. vs. U. S., 262 U. S. 151, citing Hale vs. Henkel, 201 U. S. 43; and Wilson vs. U. S., 221 U. S. 361.

ment against double jeopardy has no application unless a prisoner has theretofore been placed on trial.[48] Congress may not revive retrospectively a criminal statute which the Supreme Court has declared to have been repealed.[49]

Previous cases had established that Congress may not, under the prohibition in Article I, section 9, against taxes or duties on "articles exported from any state," tax articles in course of exportation even by a general law reaching all articles of the class.[50] This principle is now held to relieve from taxation a sale by a manufacturer to a broker in fulfilment of an order from a foreign merchant, the circumstances of the case showing that the effect of the sale was to start the goods involved for the port.[51]

VII. STATUTORY CONSTRUCTION

The Anti-Trust Acts; Federal Trade Commission; Aliens

A combination of bill posters to refuse to post advertisements sent them in interstate commerce falls within the provisions of the Sherman Act;[52] also a conspiracy to exclude actors from theatres opened by members of the combination;[53] also, a combination of linseed oil producers exchanging trade information through a central bureau.[54] A rate, however, which has received the approval of the interstate commerce commission is not illegal because it was the result of an illegal conspiracy within the sense of the Sherman Act.[55] The federal trade commission "has no general authority to compel competitors to a common level, to interfere with ordinary business methods, nor to prescribe arbitrary standards for those engaged in the conflict for advantage called

[48] Collins vs. Loisel, 262 U. S. 426. "Protection against unjustifiable vexation and harassment incident to repeated arrests for the same alleged offense must ordinarily be sought, not in constitutional limitations—but in a high sense of responsibility on the part of the public officials charged with duties in this connection," *ibid.*

[49] United States vs. Statoff, 260 U. S. 477, citing Ogden vs. Blackledge, 2 Cranch 272; and Koshkonong vs. Burton, 104 U. S. 668.

[50] See United States vs. Hvoslef, 237 U. S. Crew Levick Co. vs. Penn., 245 U. S. 292; Peck & Co. vs. Lowe, 247 U. S. 165.

[51] Spalding & Bros. vs. Edwards 262 U. S. 66.

[52] Ramsay Co. vs. Associated Billposters, 260 U. S. 501.

[53] Hart vs. Keith Vaudeville Exchange, 262 U. S. 271.

[54] United States vs. Am. Linseed Oil Co., 262 U. S. 371.

[55] Keogh vs. Chic. & N. W. R. Co. 260 U. S. 156.

'competition;' " wherefore the furnishing at less than cost of tanks and pumps by oil refiners to dealers on condition that the equipment shall not be used for the product of a competitor may not be banned by the commission, the practice not being one "opposed to good morals."[56] Also, the court has the right to consider facts not reported by the commission in reviewing the findings thereof.[57]

The Federal Employers' Liability Act does not apply to a wanton killing by a railway engineer of a superior officer.[58] A person of the Japanese race is not "a free white person" within the meaning of section 2169 of the Revised Statutes, not being a Caucasian;[59] a high-caste Hindu, although a Caucasian, is not a "free white person" within the meaning of the same section;[60] and neither, therefore, is entitled to naturalization. A salesman is not a merchant within the meaning of the Immigration Act of February 5, 1917, and as such entitled to enter the country.[61] Mussels are not realty[62] a determination which seems to settle the old controversy as to whether clam-digging is a branch of agriculture or of fishing in favor of the latter occupation.

Section 35 of the Criminal Code, penalizing attempts to defraud the United States government by preventing false claims, extends to acts committed on the high seas, although the statute does not expressly extend thereto, since such acts are not logically dependent on their locality for the government's jurisdiction and the United States has the sovereign right to regulate ships under its flag and the conduct of its citizens while on such ships.[63] The Federal Reserve Act does not forbid a federal reserve bank from undertaking the collection of checks on nonmember banks within its district, provided the collection can be made without paying exchange.[64]

[56] Federal Trade Com'n vs. Sinclair Refining Co., 261 U. S. 463.
[57] Federal Trade Com'n vs. Curtis Pub. Co., 260 U. S. 568.
[58] Davis vs. Green, 260 U. S. 349.
[59] Ozawa vs. U. S., 260 U. S. 178.
[60] United States vs. Bhagat Singh Thind, 261 U. S. 204. The opinion contains an interesting excursus into the ethnological field.
[61] Tulsidas vs. Insular Collector of Customs, 262 U. S. 258.
[62] McKee vs. Gratz, 260 U. S. 137.
[63] United States vs. Bowman, 260 U. S. 94.
[64] Am. Bank & Trust Co. vs. Fed'l Reserve Bank of Atlanta, 262 U. S. 643.

B. QUESTIONS OF STATE POWER

I. STATE POWER AND THE FOURTEENTH AMENDMENT

1. The Kansas Industrial Court Case

In Wolff Packing Company vs. Court of Industrial Relations[65] a unanimous court held void, as violative of the Fourteenth Amendment, the Kansas Industrial Court Act. By this act, the avowed purpose of which was to secure continuity of food, clothing, and fuel supply, a special tribunal was created with authority to adjust disputes between employers and employees, and incidentally thereto, to compel employers to pay such wages as the tribunal adjudged to be proper and to prevent employees from agreeing together to refuse such wages.

The general proposition upon which the defenders of the act based their case was that the production of necessaries has come to be "business affected with a public interest," with the result that under such precedents as Munn vs. Illinois[66] and German Alliance Insurance Company vs. Kansas[67] the legislature might in the exercise of the police power regulate it, both as to prices and as to wages. This proposition the Chief Justice, speaking for the court, challenges. "It has never been supposed," says he, "since the adoption of the Constitution, that the business of the butcher, or the baker, the tailor, the woodchopper, the mining operator, or the miner was clothed with such a public interest that the price of his product or his wages could be fixed by state regulation. . . . One does not devote one's property or business to the public use or clothe it with a public interest merely because one makes commodities for, and sells to, the public in the common callings." The thing that has usually given the public interest, he continues, was "the indispensable nature of the service and the exorbitant charges and arbitrary control to which the public might be subjected without regulation." However, at the end he declines to "decide definitely", "whether preparation of food should be put in the . . . . class of quasi-public businesses," because even so it would still remain to determine "what regulation may be permissible in view of the private rights of the owner."

It thus appears that the decision does not rest on an outright rejection of the state's contention that certain of the businesses regulated by the

[65] 262 U. S. 522.
[66] 94 U. S. 113.
[67] 233 U. S. 389.

act under review were "clothed with a public interest," but rather on the scope of the regulation attempted. "To say," the opinion proceeds, "that a business is clothed with a public interest is not to import that the public may take over its entire management and run it at the expense of the owner. The extent to which regulation may reasonably go varies with different kinds of businesses." All of which raises the question whether it really was "the nature and purpose" of the Kansas statute "to take over" the businesses regulated by it and run them "at the expense" of the owners. In this connection the Chief Justice cites the purpose of the act, to secure continuity of supply; and then remarks, anent a quotation from Munn vs. Illinois:[68] "These words refute the view that public regulation . . . can secure continuity of the business against the owner. The theory is that of revocable grant only."

It is submitted that this proposition, albeit the very heart of the Chief Justice's argument, is entirely irrelevant to the case, that it was no purpose of the Kansas statute to secure continuity of the business as against the owner, but only to lay down conditions to which the owner must submit if he chose to continue his business. In that respect the act stood on all fours with the one involved in Munn vs. Illinois; and the only possible differentiation between the two acts is one of degree only and not of kind.[69] For the rest, the Chief Justice is entirely right in saying that the Kansas statute imports "a revolution in the relation of government to general business;" but that the revolution proceeded in the first instance from the side of government is an inference which is decidedly open to question. And it may be added in the same connection that the attention which German Alliance Insurance Company vs. Kansas receives in this opinion is anything but adequate.

[68] "He may withdraw his grant by discontinuing the use; but so long as he maintains the use, he must submit to the control."

[69] In this connection Chief Justice Taft quotes the following passage from the state court's opinion: "The defendant's plant is a small one . . . yet the plant manufactures food products . . . and if it should cease to operate, that source of supply would be cut off." This seems to signify, however, not that the state claimed the power under the act to prevent the owner from ceasing to operate if he found himself losing money, but only the right to intervene in an industrial dispute with a view to preventing such dispute from causing a suspension of operations. It should be added that the Chief Justice does not appear to draw an argument from the comparative insignificance of the business involved in this case; nor could he justly, granting the general validity of act; see Powell vs. Penn., 127 U. S. 678; and Muller vs. Ore., 208 U. S. 412.

2. The Foreign Language Cases; Liberty

The week preceding the decision in the Kansas Industrial Court Case the court pronounced void statutes of Iowa and Nebraska which forbade instruction being given in the schools of those states in other than the English language until the eighth grade should have been passed.[70] The acts disallowed were stigmatized as interfering arbitrarily "with the calling of modern language teachers, with the opportunities of pupils to acquire knowledge, and with the power of parents to control the education of their own." The decision is limited, however, to the application of the statutes involved to private and denominational schools. "The power of the state," said Justice McReynolds, speaking for the court, "to compel attendance at some school and make reasonable regulations for all schools, including a requirement that they shall give instruction in English, is not questioned. Nor has challenge been made of the state's power to prescribe a curriculum for institutions which it supports."

Justice Holmes, speaking for himself and Justice Sutherland, dissented: "We all agree, I take it, that it is desirable that all the citizens of the United States should speak a common tongue, and therefore that the end aimed at by the statute is a lawful and proper one. The only question is whether the means adopted deprived teachers of the liberty secured to them by the Fourteenth Amendment. . . . The part of the act with which we are concerned deals with the teaching of young children. Youth is the time when familiarity with a language is established, and if there are sections in the state where a child would hear only Polish or French or German spoken at home, I am not prepared to say that it is unreasonable to provide that in his early years he shall hear and speak only English at school. . . . It appears to me to present a question upon which men reasonably might differ." The difference between the majority and the minority is thus the same as in the Minimum Wage Case—one of approach; but this time Justice Sutherland is on the other side of the fence.

The successive decisions in the Minimum Wage cases, the Industrial Court case; and the Foreign Language cases, put the Supreme Court's doctrine of liberty on a stronger foundation than ever before. Hitherto, the term has had little significance beyond that afforded by the almost equally vague phrase "freedom of contract." Now it is apparent that the court intends to subject all legislative novelties, which are seriously

[70] Meyer vs. Neb., 262 U. S. 390; Bartels vs. Ia., 262 U. S. 404.

restrictive of previously enjoyed freedom of action, to the test of the doctrine that "freedom is the general rule, and restraint the exception," that "the legislative authority to abridge can be justified only by exceptional circumstances"—so exceptional, indeed, that the court can take cognizance of them without proof. The result will be disliked by reformers, but it is a not illogical consequence of the fact that, while "civil liberty" was nationalized by the Fourteenth Amendment, the ordinary police power was kept local.

3. State Regulation of Rates

A quarter of a century ago, in Smyth vs. Ames,[71] the Supreme Court laid down the rule that a state in regulating the charges of public utility companies must, under the due process clause of the Fourteenth Amendment, allow such companies "a fair return upon the value of that which it employs for the public convenience." Later decisions have tended to sharpen this rule to the proposition that "there must be a fair return upon the reasonable value of the property at the time it is being used for the public;"[72] and this, in turn, has given rise to the formula, "cost of replacement less depreciation." Proceeding on this last basis the court at the present term, in Missouri ex rel. Southwestern Bell Telephone Company vs. Public Service Commission,[73] set aside an order of the commission both on the ground that the rate of return allowed the telephone company, namely, five and one-half per cent, was inadequate, and also on the ground that the commission had failed, in calculating the rate base, to take account of the "greatly enhanced costs of material, labor, supplies, etc., over those prevailing in 1913, 1914, and 1916."

Justice McReynolds spoke for the majority of the court. Justice Brandeis, speaking for himself and Justice Holmes, while concurring in the decision, undertook in an independent opinion a systematic and thorough-going criticism of the doctrine of Smyth vs. Ames as "delusive," "fluctuating," "baffling," and unfair alternately to the public and to the investor. Thus, whereas before the late war, when prices were low, the recognized champions of regulation were all for "physical valuation," it is now the companies which are demanding that this test of "value"

[71] 169 U. S. 466.

[72] Willcox vs. Consolidated Gas Co., 212 U. S. 19, 41, 52; also, to same effect, Minnesota Rate Cases, 230 U. S. 352, 454.

[73] 262 U. S. 276.

be applied. Justice Brandeis himself urges that "the amount prudently invested" be adopted and adhered to as the rate base. "The rate base," he argues, would then "be ascertained as a fact, not determined as a matter of opinion." It would not fluctuate with the market price of labor, or materials, or money. It would not change with hard times or shifting populations. It would not be disturbed by the fickle and varying judgments of appraisers, commissions, or courts. It would, when once made in respect to any utility, be fixed for all time, subject only to increases to represent additions to the plant, after allowance for the depreciation included in the annual operating charges."

The result of the debate seems to have been a draw. In Bluefield Waterworks and Improvement Company vs. Public Service Commission the "cost of reproduction less depreciation" formula was again insisted upon;[74] but in the Georgia Railway and Power Company vs. Railroad Commission, decided the same day, an all but unanimous court, speaking through Justice Brandeis, sustained the Georgia commission in asserting that "the exercise of a reasonable judgment as to the present 'fair value' required some consideration of reproduction costs as well as of original costs, but that 'present fair value' is not synonymous with 'present replacement cost,' particularly under abnormal conditions."[75] In brief, the original uncertainties of Smyth vs. Ames still remain.

Other cases under this heading stand for the following propositions: The Supreme Court will not consider whether rates set in accordance with a binding-contract between a company and a municipality are confiscatory, or not.[76] A state may exercise its legislative power to regulate public-service utilities and fix rates for the public welfare notwithstanding the effect of its action on private contracts;[77] and it may do this whether it puts the rates up or down.[78] In delegating its power to set rates to an administrative agency, the legislature must

[74] 262 U. S. 679.

[75] 262 U. S. 625.

[76] Ga. R'y & Power Co. vs. Decatur, 262 U. S. 432. But such contract rates may not be extended to new territory by enlarging the area of the municipality; nor may the burdens of the company under the contract be increased without its consent, in the matter of issuing transfers. The instant case, and Ga. R'y & Power Co. vs. College Park, 262 U. S. 441.

[77] Ark. Nat. Gas Co. vs. Ark R. Com'n, 261 U. S. 379, citing Union Dry Goods Co. vs. Ga. Pub. Serv. Corp., 248 U. S. 372; and Producers Trans. Co. vs. R. Com'n, 251 U. S. 228.

[78] Ortega Co. vs. Triay, 260 U. S. 103.

enjoin upon the agency a certain course of procedure and rules of decision in order to avoid the objection of a mere delegation of legislative power.[79] A state may operate a railroad for the public benefit where the corporation becomes financially unable to do so, but must make provision for keeping the property in repair and paying the rentals therefor.[80] Authority on the part of a municipality to surrender its power to prescribe reasonable street car fares must be very clear.[81]

4. The "Cave-In" Law, Mob Violence, Miscellaneous

Of the remaining cases under the Fourteenth Amendment two stand out most prominently. In the first of these, Pennsylvania Coal Co. vs. Mahon,[82] a statute forbidding the mining of coal under dwellings and streets, where the right to mine had been granted, was held to amount to a taking of property without just compensation. The decision represents a reversion to the doctrine of Wynehamer vs. People,[83] decided before the Civil War, and can in no wise be squared with cases like Mugler vs. Kansas,[84] nor indeed with current doctrine as to what constitutes a "taking" within the meaning of the Fifth Amendment. This, however, does not signify that the decision is not "good law." When a public benefit is obtained at great cost to a small and easily ascertainable class in the community, elementary justice requires that the public and not such class should stand the expense.

The other case just referred to was that of Moore vs. Dempsey,[85] in which it was held that where public passion has rendered the trial of a capital case in a state court a mere travesty on justice, relief can be sought in the national courts by application for a writ of habeas corpus, notwithstanding the corrective process which is afforded by state law. Justice Hughes' opinion in Frank vs. Mangum[86] some years ago had clearly previsied the possibility of national judicial intervention in extreme cases, but the case at bar is the first one in which such intervention has ever taken place.

[79] Wichita R. & Light Co. vs. Publ. Util. Com'n of Kan., 260 U. S. 48. This seems to be new law so far as the Supreme Court is concerned.
[80] Boston vs. Jackson, 260 U. S. 309.
[81] Paducah vs. Paducah R'y Co., 261 U. S. 267.
[82] 260 U. S. 393.
[83] 13 N. Y. 391.
[84] 123 U. S. 623.
[85] 261 U. S. 186.
[86] 237 U. S. 309.

Another case afforded Chief Justice Taft the opportunity to compile the precedents in which state statutes allowing an attorney's fee against railway companies for failing to settle claims against them with reasonable promptitude were involved, and on the basis of this review the court sustained a Nebraska statute of this character but mitigated by the proviso that the fee is not to be allowed where the claimant loses his case.[87] Several cases involved insurance companies. In one it was held that the state may validly require hail insurance policies to take effect twenty-four hours after the application to the local agent, in the absence of specific notice to the contrary;[88] in another a special tax on corporations insuring in companies which were not authorized to do business in the state was held void,[89] on the basis of Allgeyer vs. Louisiana;[90] while a third set aside a judgment against an insurance company which was not "doing business" in the state, the judgment having been secured by service on the secretary of state.[91] Three other cases stand each for fairly obvious results: that the state may license dentists;[92] that it may license "realtors;"[93] and that the benefits of a workman's compensation act may be validly extended to nonresident alien dependents.[94] On the other hand, the holding in a fourth case that a corporation not doing business in a state was entitled by the equal protection clause to enter such state and prosecute a claim in its courts on the same terms as nonresident individuals would seem to indicate an effort to extend by indirection Article IV, Section 2, Paragraph 1, of the Constitution to corporations.[95] That there is "no

[87] Chic. & N. W. R'y Co. vs. Fowler Co., 260 U. S. 35. See also Southern R. Co. vs. Clift, 260 U. S. 316.

[88] Nat'l Un. Fire Ins. Co. vs. Wanberg, 260 U. S. 71.

[89] St. Louis Cotton Compress Co. vs. Ark., 260 U. S. 346.

[90] 165 U. S. 578.

[91] Minn. Com'l Men's Assoc. vs. Benn, 261 U. S. 140. The case seems to stand for the proposition that the "doing of business" by such a company within a state involves the maintenance of an agent there.

[92] Douglas vs. Noble, 261 U. S. 165, citing Dent vs. W. Va., 129 U. S. 114; but the act conferring such authority on a board of examiners must be interpreted not to grant arbitrary powers, Yick Wo. vs. Hopkins, 118 U. S. 356.

[93] Bratton vs. Chandler, 260 U. S. 110.

[94] Madera Sugar Pine Co. vs. Indust'l Accident Com'n, 262 U. S. 499. A number of cases reiterative of conventional results are omitted.

[95] Ky. Fin. Corp. vs. Paramount Auto Exch. Corp., 262 U. S. 544. Article IV, Sec. 2, Par. 1, reads as follows: "The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states." That a corporation is a "person" within the meaning of the Fourteenth Amendment has long been recognized. See Santa Clara County vs. So. Pac. R. Co., 118 U. S. 394. It is not, however, a "citizen" within the meaning of the above quoted article. See Blake vs. McClung, 172 U. S. 239.

inherent right of self government" in municipal corporations which is beyond the legislative control of the state, and that so far as the Constitution of the United States is concerned the state has absolute power over all property of municipalities within its limits which is held by them for "governmental purposes," is asserted in Trenton vs. New Jersey.[96] Lastly, should be noted the difference between a judgment declaring a public right and one whereby private rights are vested—the former may be annulled by subsequent legislation, but the latter must be enforced regardless of such legislation.[97]

Several taxation, special assessment, and eminent domain cases illustrated familiar principles: A tax-payer may be unlawfully discriminated against by the intentional and systematic under-valuation of the same class of property belonging to others, even though his own property is not assessed at more than full value.[98] Laying fifty-seven per cent of the tax for a given year for the drainage improvement of overflowed land on 3.61 miles of railroad which could benefit only indirectly is invalid.[99] The test of the public character of an improvement is the use to which it is to be put, not the person by whom it is to be used;[100] nor is it essential to a "public use" that the entire community, or even any considerable portion of it, should directly participate in a public improvement.[101]

II. THE STATE POWER AND THE COMMERCE CLAUSE

1. Interstate Flow of Commodities

A state may not require the distributors of natural gas produced within its limits to give a preference to local customers as against those

[96] 262 U. S. 182, citing East Hartford vs. Hart. Bridge Co., 10 How. 511; Mt. Pleasant vs. Beckwith, 100 U. S. 514; Hunter vs. Pittsburg, 207 U. S. 161. Sec. People vs. Hurlbut, 24 Mich. 44, in which the late Judge Cooley endeavored to call into being such an "inherent" right. See also Amasa M. Eaton on "The Right to Local Self-Government," in the *Harvard Law Review*, vol. 13. 441, 570, 638; and vol. 14, 20, 116.

[97] Hodges vs. Snyder, 261 U. S. 600, citing Penn. vs. Wheeling & B. Bridge Co., 18 How. 421; Clinton Bridge Case, 10 Wall. 454; United States vs. Klein, 13 Wall, 128; McCullough vs. Va., 172 U. S. 102.

[98] Southern R'y Co. vs. Watts, 260 U. S. 519; also, to same effect, Sioux City Bridge Co. vs. Dakota County, 260 U. S. 441.

[99] Thomas vs. Kan. City So. R'y Co., 261 U. S. 481.

[100] Milheim vs. Moffat Tunnel Improv. Dist., 262 U. S. 710, citing many railway cases.

[101] Rindge Co. vs. County of Los Angeles 262 U. S. 700. A few cases which illustrate familiar doctrine are omitted.

in other states; and a state whose citizens would be disadvantaged by the enforcement of such a requirement may maintain an original suit in the Supreme Court to prevent this from happening. So it was held in Pennsylvania vs. West Virginia,[102] the closing day of the term. Though the decision of the court does not go beyond that in West vs. Kansas Natural Gas Company,[103] which was decided some years ago, three justices dissented. Justice Holmes' opinion points out the inconsistency between this holding and the result arrived at in the tax cases which are noted just below. Justices McReynolds and Brandeis urged in addition the question of jurisdiction, the latter arguing persuasively that the danger which was sought to be enjoined was not sufficiently imminent to bring the case within the rules which govern the granting of such relief.

It is interesting to group this case with Hammar vs. Dagenhart[104] and Leisy vs. Hardin,[105] both of which are apparently still in good standing with the court, in relation to the question of the control of child labor. By the former, the products of child labor being in themselves good articles of commerce, Congress may not check their flow from one state to another; by the latter a state may not exclude such products entering it from other states. Now by Pennsylvania vs. West Virginia a state may not forbid such products which originate within its own borders from being sent to other states, even with the commendable intention of preventing its own degraded standards of labor from affecting its neighbors. There is, in short, no legislative authority in the United States, as government is at present constituted, with power to prevent interstate traffic in the products of child labor, even with the purpose of making effective a ban on local traffic therein. A curious situation, to be sure!

In Heisler vs. Thomas Colliery Company,[106] a Pennsylvania tax on anthracite coal at the mouth of the pit was sustained as a legitimate exercise of the state's taxing power and not a regulation of interstate commerce, notwithstanding the fact that the great proportion of the coal is intended for shipment without the state. Similarly, in Oliver Mining Company vs. Lord,[107] it was ruled that the mining of ore may

[102] 262 U. S. 553.
[103] 221 U. S. 229.
[104] 247 U. S. 251.
[105] 135 U. S. 100.
[106] 260 U. S. 245.
[107] 262 U. S. 172.

be taxed as an occupation, although practically all the product of the mines is immediately shipped out of the state on cars which run to the mines and are loaded from "pockets" or by steam shovels directly from the open pits. Both decisions were unanimous and apply accepted doctrine. They should have been qualified, however, by the admission that such taxes, because of their obvious and immediate effect upon the prices of commodities which are extensively dealt with in interstate commerce, are undoubtedly subject to disallowance by Congress.[108] A third case, on the other side of the line, rules that logs of pulp wood which have been placed in a river to be floated into another state are in interstate commerce so as to be beyond the taxing power of the state even though they are temporarily held within the state of origin because of high water.[109]

2. Miscellaneous

An occupation tax on a dealer in oil, which had been brought into the state from another state and sold in the original packages, is not an unconstitutional interference with interstate commerce, the tax being uniform upon all oil dealers in the state.[110] This is the result reached by the Chief Justice after a careful review of the precedents. The authority of Brown vs. Houston[111] and succeeding cases is thus restored in full, and the recent Continental Oil Cases [112] disavowed or distinguished. On the other hand, in Phipps vs. Cleveland Refining Company,[113] Justice McKenna, speaking for a unanimous court, announces that an inspection fee on petroleum products nearly double the cost of inspection must be regarded as "repugnant to Article 1, Section 10, Clause 2, of the Constitution of the United States, forbidding states from laying imposts without the consent of Congress upon interstate commerce (sic), except such as may be absolutely necessary for the execution of inspection laws." This belated discovery that Article 1,

[108] See Board of Trade vs. Olsen, *supra*; also Brown vs. Houston, 114 U. S. 622, where the supervisory power of Congress over certain state taxes is recognized.

[109] Champlain Realty Co. vs. Brattleboro, 260 U. S. 366.

[110] Sonneborn vs. Cureton, 262 U. S. 506.

[111] See note 108 *supra*.

[112] Askren vs. Continental Oil Co., 252 U. S. 444; Bowman vs. Continental Oil Co., 256 U. S. 642. For comment, see this *Review*, vol. 15, 67; and vol. 16, 239.

[113] 261 U. S. 449.

Section 10, applies to interstate commerce overrules a number of precedents.[114]

A tax on the property of a sleeping car company, located within a state, may be measured by the company's gross receipts, although it is doing interstate business, it being fairly shown that this method was resorted to "merely as a means of getting at the full value of the property, considering its nature and use."[115] A franchise tax on an interstate railway for the privilege of doing an intrastate business is not a regulation of interstate commerce.[116] A state may tax the net income of property, as distinguished from the net income of the owner thereof, although the property is used in interstate commerce.[117] An order of a state commission requiring through night trains passing without the state to stop at a town, which has a population of 2500 persons and is already supplied with facilities commensurate with its needs, is an invalid interference with interstate commerce,[118] The solicitation of traffic by railways in states remote from their lines is interstate commerce, and a statute which permits service upon the agents who are employed in this business, without regard to the cause of action, is a burden upon interstate commerce.[119]

III. OBLIGATION OF CONTRACTS; EX POST FACTO; NATIONAL SUPREMACY

The Constitution affords no protection against the impairment of the obligation of contracts by judicial decision, unless the real effect thereof be to give operation to a later statute impairing such obligation.[120]

[114] The principal one is Woodruff vs. Parham, 8 Wall, 123, of which C. J. Taft remarks in the Sonneborn Case: It "has never been overruled, but has often been approved and followed." There it was held that the terms "imports" and "exports" in Art. I, Sec. 10, are confined to foreign commerce. It would appear that the court has not even yet entirely extricated itself from the difficulties into which it strayed in the Cont. Oil Co. Cases and Standard Oil Co. vs. Graves, 249 U. S. 389. There is an essential contradiction between the holding in the Phipps Case, *supra*, and the Sonneborn Case, of later date, its designation alone affording no reason for condemning an otherwise valid tax.

[115] Pullman Co. vs. Richardson, 261 U. S. 330. Cf. Galveston, H. & S. A. R. Co. vs. Tex., 210 U. S. 217.

[116] Southern R'y Co. vs. Watts, 260 U. S. 519.

[117] Atlantic Coast Line R. vs. Daughton, 262 U. S. 413, citing Shaffer vs. Carter, 252 U. S. 37.

[118] St. Louis-San Francisco R'y Co. vs. Pub. Serv. Com'n, 261 U. S. 369.

[119] Davis vs. Farmer's Coöp. Equity Co., 262 U. S. 312.

[120] Columbia R'y, Gas & Elec. Co. vs. S. C., 261 U. S. 236, citing N. O. Water-w'ks Co. & La. Sugar Ref. Co., 125 U. S. 18; Central Land Co. vs. Laidlaw, 159 U. S. 103; Bacon vs. Tex., 163 U. S. 163 U. S. 207.

A statute which converts a covenant in a state land grant into a condition subsequent and imposes forfeiture for nonfulfilment violates Article 1, Section 10;[121] not so, a statute which requires the filing by a mortgagee of an affidavit within three months of foreclosure;[122] nor yet a statute which imposes a penalty tax upon estates of decedents for nonpayment of taxes during life.[123] A tax on the income from a mortgage is not a tax on the mortgage itself within the sense of a statute exempting certain classes of mortgages from taxation.[124] A state may authorize banks to pay checks by draft, the depositors consenting, without violation of the prohibition against a state making anything but gold or silver a legal tender in the payment of debts.[125] "The contract, and dealings of national banks are subject to the operation of general and undiscriminating state laws" which do not conflict with the letter and purpose of congressional legislation respecting such banks.[126]

[121] Same case.

[122] Conley vs. Barton, 260 U. S. 677.

[123] Bankers Trust Co. vs. Blodgett, 260 U. S. 647.

[124] New York vs. Law, ... U. S. ....

[125] Farmers and Merchants' Bank vs. Fed'l Reserve Bank, 262 U. S. 649.

[126] First Nat'l Bank of San Jose vs. Calif., 260 U. S. 366. The principle here announced, if applied generally to national instrumentalities, would secure to the states the right to tax national bonds, with the assent of Congress, by "general and undiscriminating" laws. This is undoubtedly the sound view of the matter. See especially Osborn vs. Bank of the U. S., 9 Wheat. 738; and Farmers' and M. Bank vs. Dearing, 91 U. S. 29.

AMERICAN GOVERNMENT AND POLITICS

THE SECOND, THIRD AND FOURTH SESSIONS OF THE SIXTY-SEVENTH CONGRESS

December 5, 1921–September 22, 1922; November 20–December 4, 1922; December 4, 1922–March 3, 1923*

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The Legislative Record. The Sixty-seventh Congress was unique in several respects. For the first time, there were four sessions. This was due to the fact that, in the hope of securing the passage of the Ship Subsidy Bill, President Harding called a special session which lasted only a fortnight. In total number of working days, however, the Sixty-seventh Congress yields to the Sixty-third and Sixty-fifth Congresses, whose "long" sessions were longer. In the fourth session, moreover, "the lame ducks" who had been defeated at the November, 1922, election exercised an exceptional influence on legislation. This gave rise to more discussion than usual of the proposals, which reappear in every Congress, to dispense with the short session, composed in part of members who have been repudiated by their constituencies. The Republican majority in the House of Representatives was more than two-thirds, so that the rules could be suspended by a strict party vote. There were rather interesting relations between the President and Congress and, finally, the activity and inactivity of the Congress were criticized with somewhat more than the customary bitterness.

Of the activity, however, there can scarcely be any question. At the second session, 255 public acts, 45 public resolutions, and 132 private acts and resolutions received presidential approval. This, as Mr. Mondell pointed out, was at the rate of nearly two laws per legislative day of the session. In addition the House of Representatives

* For previous notes on the work of Congress, see *American Political Science Review*, vol. 13, p. 251; vol. 14, pp. 74, 659; vol. 15, p. 366; vol. 16, p. 41.

passed 140 public and 109 private bills which had not been considered by the Senate and approved 7 Senate bills which had not been agreed to in conference when the session came to an end. This rain of legislation, Mr. Mondell thought, was an indication of the "marvellous achievement of the American people under the leadership and in harmony with the policies of the Republican Party." There was, he maintained, "no parallel in human history, and the roster of the great men who have served the Nation and the World as Republicans stands unrivalled in the annals of time."[1]

At the third session only two public laws (providing for the expenses incident to the session and relating to a public park in Pennsylvania) and two private pension laws were passed. The attention of the House was taken up by the Ship Subsidy Bill—the *raison d'être* of the special session—and in the Senate a filibuster on the Anti-Lynching Bill was so successful that no business whatever was transacted. Two hundred and fifteen public laws and 126 private laws were passed during the fourth session. Three hundred and twenty of the measures at these three sessions were of purely local importance. Eighteen were for the benefit of war veterans; ten were for the relief of the agricultural interests; nineteen related to foreign matters, and twenty-four (in addition to the appropriation acts) were for the executive departments.

Approximately one and one half laws were passed for every one of the 624 days Congress was in session,[2] and a number of important bills failed.[3] In addition to laws which will be mentioned specifically later, the important measures to receive the approval of the President included a resolution extending the operation of the three per cent immigration act; a law authorizing associations of producers of agricultural products; an amendment to the Federal Reserve Act stipulating that

[1] *Congressional Record*, September 20, 1922, p. 14127.

[2] The House of Representatives took a recess from June 30, 1922 to August 15, 1922.

[3] Among the measures which passed the House of Representative but failed of approval by the Senate were the shipping bill; the anti-lynching bill; the railroad refunding bill; the blue-sky securities bill; the bill to prevent corrupt practices; the revision and codification of the federal statutes; a bill regulating radio communication; a bill providing standard measures for fruits and vegetables; a bill to prevent the manufacture of adulterated and misbranded food and drugs; a bill for the improvement of the foreign service; the naval omnibus bill, and a bill to establish standards of weights and measures for wheat-mill and corn-mill products.

appointments "shall have due regard to a fair representation of the financial, agricultural, industrial and commercial interests, and geographical divisions of the country" (an indirect method of requiring the President to appoint a "dirt" farmer to the board); an anti-narcotics law, creating a federal narcotic control board, composed of the secretaries of state, the treasury, and commerce; the Naval Scrapping Act, and the Classification Act of 1923.

At the second session the Fordney Tariff Bill became law. Hearings had been begun on the measure January 6, 1921; it was introduced in the House June 29; reported by the committee on ways and means July 6, and passed the House on July 21.[4] It was referred to the Senate finance committee July 22, 1921, and was not reported from the finance committee until April 2, 1922. When the measure appeared in the Senate it had 2,428 amendments and an interminable debate was begun. On July 5, before the great majority of items in the bill had been acted upon by the Senate, the Republican leaders proposed to apply cloture under Rule 22 of the Standing Rules of the Senate. The proposal failed to secure the necessary two-thirds vote,[5] and debate continued until August 18 when the measure was passed.[6] The conference committee did not come to an agreement until September 12 and the House ordered the bill back to conference with instructions to strike out the dye embargo provision, and to place potash on the free list. The House, however, gave way more frequently than the Senate; and Representative Garner, of Texas, declared that the House had yielded more than thirty times as often as the Senate. The constitutional prerogative of the House to originate money bills apparently means only the prerogative of originating the enacting clause.[7] The

[4] See *American Political Science Review*, vol. 16, p. 43.

[5] *Congressional Record*, July 7, p. 10860, ff.

[6] The Fordney bill holds the record for time consumed in the consideration of tariff measures. The McKinley bill was introduced in April and became law in October; the Wilson bill was introduced in December and became law (without the President's approval) the following August; the Dingley bill was introduced in March and was agreed to in July; the Payne bill was introduced in March and was concluded in August; and the Underwood bill was introduced in April and became law on October 3, 1913.

[7] For a discussion of this clause in connection with a Senate amendment tacking a sales tax to the Bonus Bill, see *Congressional Record*, August 30, p. 13004.

amended conference report passed the House on September 15 and the Senate on September 19.[8]

The funding of foreign debts was the subject of several congressional measures. The Foreign Debt Funding Act was approved on February 9. It had passed the House during the first special session and was passed by the Senate in an amended form in January, 1922. It provided for a debt commission of five members with the secretary of the treasury as chairman and this compromise ended an acute discussion between the President, who desired unrestricted executive discretion, and Congress, which insisted on retaining complete control of the details of the refunding expedients. The compromise on a commission was so simple that it is astonishing it was not suggested in the very beginning.[9] When Congress approved the arrangements for refunding the British debt the law of February 9 was amended to provide that the foreign debt commission should consist of eight members, not more than four members to be appointed from one political party.

An interesting constitutional question was raised when President Harding appointed Senator Reed Smoot and Representative Theodore E. Burton as members of the World War Foreign Debt Commission. A subcommittee of the Senate judiciary committee was divided on the question of whether the appointments were proper under Article I,

[8] On the tremendous powers of conference committees and their ability to thwart the opinion of one House of Congress see the speech of Senator Simmons, *Congressional Record*, p. 14035 (legislative day of September 16); and the proceedings in the House, August 22, p. 12695 ff., and September 13, p. 13557 ff.

On August 25th, 1922, a bill creating additional district judges (H. R. 9103) was referred back by the Senate to the conferees on the ground that it omitted matter agreed upon by both Houses and inserted new matter. This rule is not invoked very frequently. In this case the point of order was quite technical and the legislation by the conferees was not important. See *Congressional Record*, p. 12806.

In the Tariff Bill both the Senate and the House fixed a 7 cent duty for long-haired staple cotton which was placed by the conferees on the free list. For a similar point of order—in respect of legislation by the conferees on the Veterans' Adjusted Compensation Act (H. R. 10874)—see *Congressional Record*, September 14, 1923, p. 13624 ff. On the general question of conference committees see my article, "Conference Committee Legislation," *North American Review*, March, 1922.

[9] See my article "Parliamentary Commissions in France, II," *Political Science Quarterly*, December, 1923.

Section 6 of the Constitution.[10] Senators Cummins, Nelson and Sterling took the view that the commissioners were not civil officers. Senators T. J. Walsh, Brandegee, and Overman disagreed on the question of eligibility and filed a dissenting report. The attorney general rendered a favorable opinion (Senate Document No. 115) and the matter was exhaustively discussed in the Senate debate on the creation of the commission.[11]

The expedient of a commission was also resorted to for consideration of the problem of coal. On August 18, President Harding appeared before Congress to urge legislation necessary to deal with the coal strike. Two measures were enacted by Congress. One provided for the establishment of the United States coal commission, to investigate the facts and conditions of the coal industry, and the other, known as the Coal Distribution and Price Control Bill, increased the powers of the interstate commerce commission to include authority to issue orders for such matters as priorities in car service. These two measures were approved by the President on September 22.

The Soldiers' Bonus Bill[12] was passed by the House on March 23, 1922, and was reported with amendments to the Senate on June 8. It was discussed from time to time while the tariff measure was before the Senate and was finally passed on August 31 by a vote of 47 for (27 Republicans and 20 Democrats) and 22 against (15 Republicans and 7 Democrats). The measure as it came from the House contained no method for raising the money necessary, so the Senate adopted an amendment providing that the cost of the bonus should be raised from the interest received from foreign governments on the war debt to the United States. A second Senate amendment provided for the reclamation of swamp land to create homesteads for veterans. Additional expenditures necessary for this were estimated at $350,000,000. On September 11, the conferees eliminated these two provisions from the bill and the conference report was approved by both Houses, but on September 19 the President returned the bill with a veto message.

[10] "No Senator or Representative shall during the time for which he was elected be appointed to any civil office under the authority of the United States which shall have been created or the emoluments whereof shall have been increased during such time."

[11] *Congressional Record*, February 22, 1922, p. 3215; Feb. 23, p. 3285; and Feb. 24, p. 3325 ff.

[12] See *American Political Science Review*, vol. 14, p. 666; vol. 15, p. 80; vol. 16, p. 45.

The House passed the bill over the veto by a vote of 258 to 54, but in the Senate, by a vote of 4 less than the necessary two-thirds, the veto was sustained. President Harding at the fourth session of the Congress also vetoed the Bursum Pension Bill, giving pensions of $50.00 a month to all widows and veterans of the Civil War and increasing the pensions of the veterans themselves. Since the compensation paid to the widows of World War veterans amounts to only $24.00 a month, "it would be indefensible," President Harding said, "to insist on that limitation upon actual war widows if we are to pay $600 per year to widows who married veterans sixty years after the Civil War."[13]

Budgetary Procedure. Mr. Madden announced in the House of Representatives on January 20 that the record of the House, in passing all of the eleven regular appropriation bills by that date, had surpassed the record of any previous short session of Congress for expeditious preparation in committee and passage by the House.[14] In previous Congresses the dates on which the last annual supply bill had been considered by the House ranged from February 17 to March 2. The greater quickness was due to the fact that at the opening of the session the committee on appropriations had five bills practically ready for presentation to the House and that authority with regard to the appropriations was concentrated in the one committee. The bills received consideration in the Senate and were approved at earlier dates than has been customary. Five of the regular bills and a deficiency bill were approved in January, and on February 14 only three measures remained with differences between the House and the Senate unadjusted. This record compares most favorably with previous congresses.[15] The budget system and the single committee in both the

[13] During the second session, President Harding vetoed three other measures: H. R. 77, a bill for the consolidation of certain forest lands; H. R. 6380, a bill to amend the charter of the Masonic Mutual Relief Association of the District of Columbia, and H. R. 6679, a bill to divide the state of Texas into four judicial districts. Except in the case of the bonus bill, President Harding's troubles with Congress were not made manifest in vetoes.

[14] In spite of the fact that congressional business was much less congested than usual in respect of the appropriation bills, 99 measures received President Harding's approval on March 4. Forty-four were signed at the White House and fifty-five at the Capitol, the last bill being signed five minutes before Congress adjourned. There were no pocket vetoes and there was no attempt to reraise the question presented by Mr. Wilson in signing bills after the adjournment of Congress. See *American Political Science Review*, Vol. 14, p. 669.

[15] For the dates in previous congresses, see *American Political Science Review*, vol. 13, p. 260; vol. 14, p. 82; vol. 15, p. 367.

House and the Senate, furthermore, have reduced the evil of legislative riders on appropriation bills. "The Committee on Appropriations," Mr. Madden said, "in its work of preparing appropriations has endeavored conscientiously to adhere to the policy of refusing to consider extraneous legislation and to avoid trenching upon the jurisdiction of the committees of the House whose duty it is to frame legislation." When the legislative committees reported appropriation bills,[16]

[16] Under the old system appropriations for a single department were frequently found in a number of bills. The war department grants, for example, were contained in five different measures. The new bills, eleven in number, are based on the departments and other units of organization. War department appropriations are in one bill and are divided to show the amounts for military and non-military activities. The following table explains the changes:

FORMER BILLS	NEW BILLS
1. Agricultural.	1. Agricultural Department.
2. Army.	2. Commerce and Labor Departments.
3. Diplomatic and consular.	3. District of Columbia.
4. District of Columbia.	4. Executive Office and independent offices, commissions, etc.
5. Fortification.	5. Interior Department.
6. Indian.	6. Legislative branch.
7. Legislative, executive, and judicial.	7. Navy Department.
8. Navy.	8. Post Office Department.
9. Pension.	9. State and Justice Departments.
10. Post Office.	10. Treasury Department.
11. River and harbor.	11. War Department.
12. Sundry civil.	12. Deficiency.
13. Deficiency.	

The new bills are composed of items for each department or establishment heretofore distributed in several bills, as follows:

1. Agricultural: Items for that department formerly in the Agricultural and sundry civil bills.

2. Commerce and Labor: Items for those departments formerly in the sundry civil and legislative, executive, and judicial bills.

3. District of Columbia: Items formerly carried in the District of Columbia bill and all other items in the sundry civil and legislative, executive, and judicial bills chargeable in part against the revenues of the District of Columbia.

4. Executive office and independent offices: Items formerly carried for these purposes in the sundry civil and legislative, executive, and judicial bills.

5. Interior Department: Items for this department formerly carried in the sundry civil, legislative, executive, and judicial, and pension bills.

6. Legislative branch: Items for the Senate, House, joint congressional committees and commissions, Capitol police, legislative drafting service, Architect of the Capitol, Library of Congress, Botanic Garden, and Government Printing

there was, of course, the natural inclination to save time and to combine legislation and grants of money.

The change in number and scope of the appropriation bills, which by custom originate in the House of Representatives, made it necessary for the Senate to revise its machinery for dealing with the bills after they had passed the House. The rule in the Senate (Rule 16) provided that of the regular appropriation bills which came over from the House, five should go to the committee on appropriations; the rivers and harbors bill went to the committee on commerce; the agricultural bill to the committee on agriculture and forestry; the diplomatic and consular bill to the committee on foreign relations; the army and military academy bills to the committee on military affairs; the Indian bill to the committee on Indian affairs; the naval bill to the committee on naval affairs; the pension bill to the committee on pensions; the post office bill to the committee on post offices and post roads. Under the new arrangement adopted in the House, eight bills would be sent to the Senate committee on appropriations; the agricultural, postal, army and navy bills would be dealt with by the legislative committees. It was proposed to give the committee on appropriations jurisdiction over them all, and to centralize the control as it had been already centralized in the House.

The change in the rules (S. Res. 213) encountered a good deal of opposition from senators serving on the committees which would be deprived of their powers over certain expenditures. The debate ran

Office (exclusive of printing and binding for the executive departments), formerly in sundry civil and legislative, executive, and judicial bills.

7. Navy: Items for the Navy formerly carried in the Navy bill and for the Navy department proper, formerly in the legislative, executive, and judicial bill.

8. Post Office: Items formerly carried in the Post Office bill and for the Post Office department proper, formerly in the legislative, executive, and judicial and sundry civil bills.

9. State and Justice: Items for those departments and the courts formerly carried in the sundry civil, legislative, executive, and judicial, and diplomatic and consular bills.

10. Treasury: Items for the Treasury department formerly in the sundry civil and legislative, executive, and judicial bills.

11. War: Items for the War department formerly in the Army, fortification, legislative, executive, and judicial, river and harbor, and sundry civil bills. The bill is divided into two titles, namely, one title for the military activities and expenses directly related thereto and the other for the nonmilitary activities.—*Congressional Record*, July 12, 1922, p. 11063.

on for some time.[17] It was complained that the rule was not working well in the House, and that the committees on appropriations were not competent to deal with technical subjects. For these the legislative committees which had acquired some competence would be necessary. The post office appropriation bill, it was said, "might just as well have been a piece of blank paper sent over here from the other body through the committee on appropriations of that body. It was first drawn by a subcommittee of the appropriations committee of the House, no one of whom ever served on the committee on the post office and post roads, or knew anything about the technique of that service, so that we have been compelled to take that bill from its enacting clause and go through it stage by stage and practically rewrite it."[18]

The Senate amendment, however, proposed to meet this objection, in part, by creating a series of subcommittees of the appropriations committee to deal with the bills and to include *ad hoc* members recruited from the legislative committees. Thus, the naval bill would be considered by the appropriations subcommittee and three members of the committee on naval affairs. In this way it was thought technical advice could be secured, and the appropriation bill could be made to agree with other legislation; for under the rules both of the House and the Senate, complicated procedural situations sometimes come about when items are included for matters not previously authorized by law, and when the attempt is made to legislate by means of riders. In both cases there ought to be articulation between the appropriations committee and the legislative committee; in both cases, also, the legislative committees are anxious for fear that they will lose some of their legislative power.[19] The Senate rule therefore proposed that "if an appropriation bill is reported to the Senate containing new or general legislation, a point of order may be made against the bill, and if the point is sustained the bill shall be recommitted to the committee on appropriations." The existing rule[20] simply made the item subject to a point of order; the revision made the whole bill suffer the penalty and this, it was thought, would be sufficient to persuade the committee on appropriations not to encroach on the prerogatives of the legislative com-

[17] See *Congressional Record*, March 1, 2, 3, 4, 1922.

[18] Mr. Moses, March 1, p. 3578.

[19] For discussions of the same problem in the House, see *American Political Science Review*, vol. 15, p. 372.

[20] Rule 16, Sec. 3.

mittees. It is provided also that one of the conferees shall be chosen from the legislative committee.[21]

The pork barrel, which it was thought had been effectively closed by the budget system, was reopened at the short session when a so-called "Rivers and Harbors Bloc" in the House amended the army bill to carry an additional appropriation of twenty-nine millions of dollars for river and harbor work. This was in opposition to the recommendation of the budget bureau and the committee on appropriations. The amendment was retained in the Senate on February 8. President Harding was reported as believing that this incident showed the desirability of a constitutional amendment making it possible for the Executive to veto items in an appropriation bill without disapproving of the entire measure. Such a power, in his view, was necessary to prevent Congress from rendering the budget machinery entirely useless. The President apparently decided against the veto of the whole measure and then let it be known that he proposed to hold back the expenditure of funds and have no contracts made for work in excess of the figures approved by the bureau of the budget.[22]

Constitutional Amendments. During the Sixty-seventh Congress, 103 joint resolutions were introduced proposing amendments to the Constitution. These related to a great variety of matters. Proposals were made to submit to the electors in the several states the question of prohibition; to permit the manufacture and sale of beer and wine; to deny aliens the right to vote for President, Vice President, senators and representatives; to deny rights of citizenship to children whose parents are not eligible to become citizens; to give the President power to veto items in appropriation bills; to give Congress power to regulate the production of and commerce in coal, oil and gas; to provide in the event of war for the conscription of citizens, money, industries and property; to give Congress power to fix terms of office of judges of inferior courts; to require a popular vote before a declaration of war; to give the District of Columbia representation in Congress

[21] For complaints in the Senate of the important House rule limiting the right of the House conferees to agree to certain amendments without a vote of the House (*American Political Science Review*, vol. 15, p. 373 and vol. 16, p. 52) see *Congressional Record*, December 14, 1922, p. 434 and p. 452.

[22] This attitude of attempting to have his way in spite of Congress (instead of sending a veto message and fighting the issue out) recalls his position when Congress refused to increase the army as he desired. See *American Political Science Review*, Volume 16, Page 44. For a discussion in the House, see *Congressional Record*, January 20, 1923, pp. 2, 127, ff.

and allow its citizens to vote for President; to give Congress power to regulate the use of money in elections; to give Congress power to regulate marriage and divorce; to prohibit polygamy; to prohibit sectarian legislation; to create a tariff court; to provide that Congress shall have no power to lay and collect income taxes; to define treason; to give Congress power to regulate the employment of women; and to change the method of ratifying treaties.

Seventeen joint resolutions were introduced in the House and five were introduced in the Senate to deal with child labor. A compromise amendment was agreed upon by the committee on the judiciary and was ordered to be reported to the Senate February 19, 1923,[23] but no further action was taken.

The attitude of the administration caused great interest in respect to federal taxation of tax-exempt securities. A number of resolutions were introduced dealing with this matter and one passed the House of Representatives on January 23, 1923, but was not considered in the Senate.

A number of suggested amendments were for the purpose of curbing the power of the Supreme Court in its review of congressional legislation. H. J. Res. 15 provided that "no law shall be held unconstitutional and void by the Supreme Court without the concurrence of at least all but two judges;" H. J. Res. 436 (the Frear Resolution) would give Congress the power "to determine how many members of the Supreme Court shall join in any decision that declares unconstitutional, sets aside, or limits the effect of any Federal or State law and may further provide by law for the recall without impeachment proceedings of any Judge of the Court or the review and setting aside of any such Court decision providing that not less than two-thirds vote of both Houses shall agree to such recall or review." Senator La Follette's proposal would give Congress similar authority—to override by a two-thirds vote a decision of the Supreme Court nullifying a congressional statute. This scheme was approved by the American Federation of Labor at its convention on June 14, 1922. Senator Borah and Representative McSwain (S. 4483 and H. R. 9755) would declare by law (without resorting to a constitutional amendment) that Acts of

[23] The draft reads as follows:

"The Congress shall have power concurrent with that of the several states to limit and prohibit the labor of persons under the age of eighteen years." See 67th Congress, 4th Session, Senate Report, no. 1185, reprinted in the *Congressional Record*, February 24, 1923, p. 4469.

Congress shall not be declared unconstitutional "unless at least seven members of the Court shall concur before pronouncing said law unconstitutional."[24]

Several proposals were made to amend the amending clause of the Constitution. The principal one was sponsored by Senator Wadsworth and Representative Garrett, and provided that amendments should be ratified "by the vote of the qualified electors in three-fourths of the several States and that until three-fourths of the States shall have ratified or more than one-fourth of the States shall have rejected or defeated a proposed amendment any State in like manner may change its vote."[25]

The excessive mortality of the November, 1922, congressional elections and the fact that many leaders of the Republican party in the House (including Mr. Mondell, the floor leader, Mr. Campbell, chairman of the committee on rules, and Mr. Fordney, chairman of the committee on ways and means) had failed to be reëlected caused a great deal of interest in constitutional amendments advancing the date of the assembling of Congress so as to do away with the "lame duck" session. Several joint resolutions were introduced and the one fathered by Senator Norris, which would put the date for the assembling of Congress on the first Monday in January and the inauguration of the President on the third Monday in January, following the election, was passed by the Senate on February 13 by a vote of sixty-three to six. Such a change in the constitutional system had been proposed many times before but it was the first time that any favorable action had been taken by either branch of Congress. The matter probably would not have been brought to a head if Mr. Harding had not attempted to take advantage of the lame duck session of Congress in order to secure

[24] For a memorandum on legislation which the Supreme Court has declared unconstitutional see *Congressional Record*, February 24th, 1923, p. 4549 ff.

[25] See hearing before a subcommittee of the committee on the judiciary, United States Senate, January 16, 1923; Hawke v. Smith 253 U. S. 221 (1920); and in respect of the possibility of states changing their votes, Willoughby on the Constitution, Volume I, p. 522. The Brandegee amendment, reported favorably by the Senate committee on the judiciary in the 66th Congress and providing that proposed amendments should be invalid unless ratified within six years from the date of their proposal by Congress, was again discussed in the Senate. Four amendments (relating to the apportionment of representatives, the compensation of members of congress, titles of nobility, and non-interference with slavery) are apparently still pending and could be ratified by the states if they so desired. See *Congressional Record*, January 30, 1923, p. 2713.

the passage of ship subsidy legislation which, as the November elections had plainly indicated, was certain to be defeated in the new Congress. It may be, however, that the Senate passed the resolution with complete confidence that the House would not agree; and, indeed, in the House, the lame ducks themselves (the Republican leaders in control of the rules committee) refused to give an opportunity for the resolution to be considered. Mr. Harding himself let it be known that he did not favor tinkering with the Constitution and his attitude may have been partly responsible for the temerity of the Republican leaders in the House.[26]

The President and Congress. President Harding will not go down in history as an executive who was successful in leading Congress and making it do his bidding. During the campaign he had imposed a self-denying ordinance on himself; he had promised that Congress would be encouraged to play its rightful part in the constitutional system. Hence, it was difficult for him to assert his leadership when some emergency made him anxious to have Congress act in conformity with his wishes. Caprice, as Bagehot pointed out, is a characteristic device of legislative assemblies. The caprice, Bagehot thought, could be lessened by the threat of dissolution and the expensive uncertainty of a new election. No such device is possible under the American constitution, and the principal deterrent to the caprice is leadership. But it is a leadership which must exist all the time even though it may not be spectacular; the legislative back need not feel the executive lash for considerable periods, but Congress must know that the lash may descend. Mr. Harding probably regretted his promise not to use the lash.

He had his way on the joint resolution declaring peace. The resolution as it passed the Senate was not satisfactory and he had it changed in the House. He influenced the packer legislation and defeated the

[26] A number of amendments were also introduced changing the term for representatives to four years; providing for the election of the President and Vice President by direct vote; giving Congress power over the nomination of representatives and regulating their apportionment according to population. The propositions to amend the Constitution are classified in the *Congressional Digest*, March, 1923, p. 172. A list is also given in "Hearing Before the Sub-Committee of the Committee on the Judiciary, United States Senate, 67th Congress, 4th Session, on S. J. Res. 40, a Resolution proposing an amendment to the Constitution of the United States, January 16th, 1923, pp. 16–17." For a discussion of the Norris amendment see *Congressional Record*, January 30, 1923, p. 2695; February 12, p. 3538, ff. and February 13, p. 3612, ff.

insurgents in his party. He caused the Panama Canal tolls exemption to be held up in the House. He was badly beaten in his insistence that the surtax on large incomes be reduced to forty per cent, and the tariff bill was framed with little regard for the wishes of the White House. The Liberian $5,000,000 loan bill, urged by the President and Secretary Hughes, was decisively beaten in the Senate. President Harding's most courageous stand was on the bonus, and the rebuff in this case arose from the determination of congressmen to play politics, rather than from any weakness of his own. The fight over funding the debts due the United States was a draw. The ship subsidy measure[27] was filibustered against and beaten in the Senate, but even in the more complaisant House the Madden amendment requiring the appropriations to be annual was inserted against the vehement objections of the executive. Foreign policy was dealt with in the shadows cast by the Senate irreconcilables. Mr. Harding was flouted on the World Court and the question of American representation on the Reparations Commission. On the other hand, Congress in one case seemed to force the administration to act. The amendment to the naval appropriation bill requesting the executive to call an arms conference was adopted after the President had made futile efforts to have it defeated. Here, however, there is a question of how far the congressional pressure (led by Senator Borah) was exerted on a door which the executive had already begun to swing open.

But presidential leadership of Congress is becoming increasingly difficult, partly on account of the insurgent elements in the Republican party and partly on account of the procedure in the House and the Senate. In the House, leadership is now in commission. Speaker Cannon could promise Roosevelt that the House would do certain things and the things would be done. There is no one now in the House to make such promises. Its control is shared by the floor leader, the speaker, the rules committee, the committee on committees, the steering committee and the chairmen of the more important legislative committee.[28] The President will find it difficult to lead the House if there

[27] In his message presenting this measure to Congress, President Harding said: "Frankly, I think it loftier statesmanship to support and commend a policy designed to effect the larger good to the Nation than merely to record the too hasty impressions of a constituency. . . . When people fail in the national viewpoint, and live in the confines of community selfishness or narrowness, the sun of this Republic will have passed its meridian and our larger aspirations will shrivel in the approaching twilight."

[28] See George Rothwell Brown, *The Leadership of Congress*, Chapter 12.

are no authoritative agents with whom he may deal. In the Senate, a presidential program may be defeated by a handful of senators who use the unrestricted privileges of debate to terrorize the majority. The measure objected to is abandoned in order to salvage the rest of the legislative program.

Administrative Reorganization. Little was done by the joint committee on the reorganization of the administrative branch of the government which, it will be remembered, was established by Act of Congress, approved December 29, 1920. In January, 1921, the committee presented a preliminary report on reorganization to the President; on February 13, 1923, the President transmitted to the chairman of the committee a chart exhibiting in detail the present organization in the government departments and the changes suggested by the President and Cabinet. The delay, the President said, "has been caused solely by the difficulty which has been encountered in reconciling the views of the various persons charged with the responsibility of administering the Executive branch of the government."[29] On February 17 the Senate passed a resolution (S. J. Res. 282) extending the life of the commission, but little has been done subsequently. The more important changes proposed by the President were the coördination of the military and naval establishments under a single Cabinet officer as the department of national defence; the transfer of all nonmilitary functions from the war and navy departments to civilian departments, chiefly the interior and commerce; the elimination of all nonfiscal functions from the treasury department; the establishment of one new department, the department of education and welfare; to expand the post office department into a department of communications, and the attachment to the several departments of all independent establishments except those which perform quasi-judicial functions or act as service agencies for all departments.[30]

Nothing was done further with the Siegel Bill (H. R. 7882) providing for the reapportionment of representatives in Congress under the fourteenth census, after the action of the House of Representatives in recommitting the bill to the committee on the census on October 14, 1921.[31]

[29] Senate Document No. 302, 67th Congress, 4th Session; *Congressional Record*, February 16, 1923, p. 3807.

[30] On the general question of reorganization see W. F. Willoughby, *Reorganization of the Administrative Branch of the National Government* (1923).

[31] See *American Political Science Review*, vol. 16, p. 51.

Filibusters. There was, of course, the usual filibustering. Two filibusters in the Senate were successful; one in the House—more prolonged than is usually the case—was unsuccessful. The Senate, toward the close of the short session, saw the Ship Subsidy Bill (H. R. 12817) talked to death by a minority who objected to it but were not sufficiently numerous to defeat it if the measure had come to a vote. The bill was buried without much ceremony on February 28, but the filibuster had been abandoned by agreement several days before.[32]

The most spectacular filibuster for many sessions, however, occurred in the Senate while the House was discussing the ship subsidy measure (the third session). The *pièce de résistance* was the Dyer Anti-Lynching Bill (H. R. 13; House Report, No. 452). The Senate was tied up completely through the use of a new expedient: refusal of unanimous consent to dispense with the reading of the journal, the reading of the journal, and then amendments and corrections proposed and speeches on them. Such items as the exact hour that the Vice President entered the chamber; the important question of whether the prayer should be included in the journal, were the pegs on which the senators opposed to the Dyer bill hung their speeches designed to consume time. The filibuster was so successful and showed such promise of continued existence, that the leaders admitted defeat and withdrew the measure. This system of filibustering, it should be remarked, would hardly be possible towards the end of a session. Then the Senate recesses and operates for a number of calendar days with a single legislative day. This does away with the necessity for the approval of a daily journal and saves the time usually spent in "morning business." During the consideration of the Tariff bill, for example, the legislative day was a calendar day weeks before.

The Dyer bill was also responsible for the most sustained filibuster that the House of Representatives has seen for some sessions; but it was demonstrated again that obstructionist tactics can only be successful when cloture is impossible. The Anti-Lynching bill was brought before the House on December 19, 1921. The roll was called twice on points of no quorum and once on a motion to adjourn. This was before the presentation of the rule from the rules committee providing for the procedure. The rule provided that there should be ten hours general debate and that the bill should be open to amendment under the five-minute rule. Five roll-calls on points of no quorum and a motion

[32] *Congressional Record*, p. 4891.

to adjourn were necessary before the rule was adopted. The next day there were five roll-calls with no debate on the bill. Democrats absented themselves so that a quorum was not present. It was not until January 26 that the measure was passed. Sixteen hours of debate (the allowance was raised from the original ten) had required as many days.

LEGISLATIVE NOTES AND REVIEWS

EDITED BY WALTER F. DODD

Administrative Reorganization in Vermont. The Vermont legislature of 1923 embodied in two acts a fairly comprehensive plan of state administrative reorganization, thus placing Vermont in line with the numerous other states which have adopted or proposed similar schemes during the past ten or twelve years.

In Vermont, as quite commonly elsewhere, the existence of a group of constitutional, elective officers stood in the way of a complete overhauling of the civil administration. This group includes, besides the governor, the secretary of state, auditor of accounts and state treasurer; the attorney general is an elective but not a constitutional officer. These constitutional offices could not be abolished or made appointive; but a scheme of reorganization could be built around them, so far as necessary, without the embarrassment of constitutional limitations.

The offices of secretary of state and state auditor are not materially affected by the new acts. Certain duties are imposed upon the treasurer in addition to those already prescribed by law. They relate to forms of accounting, which must be approved by the governor and commissioner of finance; and to the requirement of a monthly statement to the auditor of all moneys withdrawn from the treasury upon warrants issued by the auditor, of sums appropriated by the legislature and the purposes of such appropriations, of amounts withdrawn from the treasury in pursuance of each specific appropriation, and of such other matters as may be required,—all under the direction of the governor. The treasurer seems to stand practically outside the newly created department of finance, being given no definite part in the preparation of the state budget. The office of attorney general is also unaffected by the reorganization.

The acts created seven administrative departments, namely: Finance, public welfare, public health, highways, agriculture, education and public service. These departments are not uniformly organized, owing in part to pre-existing boards and offices which for one reason or another it did not seem advisable to merge for the sake of uniformity. The

department of finance is administered by a commissioner of finance, but specifically included in the department are three other officers, namely: A commissioner of taxes, a purchasing agent and a commissioner of banking and insurance, the first two of these being pre-existing offices and the third a consolidation of the offices of bank commissioner and insurance commissioner.

Administration of the department of public welfare is vested in a commissioner of public welfare, with an assistant commissioner; the department of public health in the state board of health as constituted by law; the department of highways in the state highway board as constituted by law, with express provision for a state highway commissioner and a state engineer; the department of agriculture in the existing commissioner of agriculture, a commissioner of forestry also being included in the department; the department of education in the state board of education as constituted by law, including a commissioner of education; and the department of public service in a commissioner of public service, with the public service commission and the commissioner of industries (who also acts as commissioner of weights and measures) included in the department. The only new heads of departments created are the commissioners of finance and public welfare, and the chairman of the public service commission who is *ex officio* commissioner of public service.

The foregoing boards and officers are appointed by the governor, with the advice and consent of the senate, with the following exceptions: The purchasing agent, assistant commissioner of public welfare, commissioners of forestry and industries are appointed by the governor alone, either under the terms of the acts or by pre-existing law, while the commissioner of education is appointed by the state board of education.

On the whole the acts make no very material change in methods of creating departmental personnel. Fifteen boards and committees, and one office, that of director of state institutions, are abolished. Two other offices, namely, state engineer and commissioner of taxes, are abolished in terms, but are recreated in prescribing the personnel of the departments of highways and finance, respectively.

Of the new departments, that of finance is the most important, occupying a central position in the new scheme of administration. As already stated, at its head is the commissioner of finance, under whom are the commissioner of taxes, the commissioner of banking and insurance, and the purchasing agent. This consolidation results in the elimi-

nation of one officer, the insurance commissioner. The department has full power to prescribe accounting and disbursing systems for the several departments created by the acts, and to exercise full supervision over the same; to inquire into and inspect articles and materials furnished, or work and labor performed, in behalf of the state, for the purpose of ascertaining that the prices, quality and amount of such articles or labor are fair, just and reasonable, and within all express or implied requirements; to publish from time to time, for the information of the several departments and of the general public, bulletins of the work of the government; to investigate duplication and efficiency of organization in the work of the departments, and to formulate and put into operation plans for their better coördination. The functions of this department in connection with the state budget are referred to later. Other provisions empower it to examine the accounts of all corporations, associations and boards receiving appropriations from the general assembly; to report to the attorney-general cases of malfeasance in office, or illegal uses of public money or property; to examine vouchers, bills and claims of the several departments, and to report to the governor, when requested, estimates of state revenues.

Thus it appears that the work of the department is one of general financial supervision, direction and coördination. In addition to these broad functions it has taken over the work of the commissioners of banking, insurance and taxes, exercising them either as a department or through the commissioners included in the departmental personnel. Much of the work heretofore done by the board of control, which the acts abolish, has also been taken over, especially the power of investigating accounts and business of state boards and institutions, under the general law. In addition, all administrative officers of the state are required to make reports to the commissioner of finance, at such times and in such manner as he, with the approval of the governor, may prescribe. Formerly such reports were made to the board of control.

The department of public welfare, administered by a commissioner and assistant commissioner, has taken over the functions formerly vested in the following officers and boards: Director of state institutions; board of charities and probation; state probation officer, the commissioner of public welfare being *ex officio* state probation officer; board of trustees of the Vermont sanitorium; board of supervisors of the insane; and trustees of tuberculosis hospitals.

The department of public health, administered by the state board of health, is authorized to exercise the rights, powers and duties formerly vested by law in that board.

The department of highways, administered by the state highway board, exercises the powers previously vested by law in that board, and in the state engineer and toll bridge commissioners.

The department of agriculture has taken over the functions of the following officers: Commissioner of agriculture, state fair commissioner, creamery commissioners and state forester.

The department of education has taken over the functions of the state board of education, by which it is administered, and those of the free public library commission.

The department of public service exercises the powers formerly vested in the public service commission, through that commission; also the powers of the commissioner of industries, the commissioner of weights and measures, and the state board of conciliation and arbitration.

In 1915 Vermont adopted a budget system by creating a body known as a committee on budget, consisting of the governor as chairman, the auditor of accounts, the state treasurer, the chairman of the finance committee of the senate, the chairman of the ways and means committee of the house, and the state purchasing agent. With this committee the several officers and departments were required to file, biennially, detailed statements of receipts and expenditures for the current biennial period to date, and for the two preceding fiscal years. On the basis of these statements a budget was formulated for presentation at the next session of the legislature, including such additional appropriations as might be called for by pending bills, to be dealt with by the legislature as it saw fit.

This scheme is done away with by the new acts, under which the budget is made up by the governor-elect, on the basis of data transmitted to him by the commissioner of finance. The departmental heads, chairmen of boards and commissions, and all officers having in charge state activities receiving appropriations, are required to file with the commissioner of finance, at a stated time biennially, detailed statements of appropriations and expenditures for the current biennial fiscal period, and estimates for the ensuing biennium. It is made the duty of the commissioner of finance, at a date subsequent to the biennial state election, to transmit to the governor and governor-elect detailed statements of state accounts, including receipts, expenditures and estimates, on the basis of which the governor-elect, assisted by the commissioner, prepares and presents to the next general assembly, early in the session, a budget which is later embodied in a general appropriation bill. The governor-elect is empowered to revise, increase,

decrease or eliminate items in the estimates presented to him, giving his reasons therefor in his message transmitting the budget. The general assembly is in no wise bound to adopt the budget as presented.

In view of the general tendency in state government to increase the administrative power of the governor, strikingly illustrated in some of the schemes of reorganization lately adopted or proposed, it may be of interest to inquire into the administrative status of the Vermont governor under the new acts. The question involves a consideration of his appointing power, his power of removal, and his general power of supervision.

His appointing power has not been materially affected either way by the new acts. The constitutional offices are elective; the great majority of the other offices are filled by appointment, the senate confirming; a few are filled by the governor alone. All appointments are for the term of two years, with the exception of members of the boards included in the reorganization, whose terms vary from four to six years. The two-year terms of the governor's appointees practically begin and end with that of the governor himself, his appointments being made shortly after he assumes office.

Nor has his power of removal been materially affected by the new laws. By general statutory provision he is given power to remove any civil officer appointed by him, or by any of his predecessors, whether with or without the advice and consent of the Senate, and to fill the vacancy by appointment, his appointee to hold office until the end of the term. This sweeping power has seldom been given heretofore, but obviously it places the governor in a dominating position in state administration.

The reorganization acts largely augment the governor's supervisory powers, conferring upon him general power of superintendence over the departments thereby created. He succeeds to the rights, powers and duties vested in the board of control, which has been abolished. That board was given broad power of supervision over the departments, including the employment of clerical, expert or other assistance, and the compensation thereof; also the power to examine all institutions receiving state aid, and to suspend payments to them until satisfied that moneys paid would be properly expended.

Furthermore, he is given power to approve, and even promulgate, departmental regulations; to require from each commissioner or board at the head of a department, annually or oftener at his discretion, reports in writing concerning the needs, management and financial condition

of such department; to "provide for and require a practical working system to insure efficiency and mutual helpfulness among the aforesaid departments and other administrative departments of the state government. He may transfer, temporarily or permanently, subordinates of any one of said departments to another department, as the needs of the state may seem to him to require." So also he may make regulations with reference to the system of accounting maintained by the treasurer, and in other details is given administrative supervision.

The better opinion seems to be that good administration requires the complete responsibility of the head of each department, under the governor, for the work of his department. This principle is recognized in the reorganization acts by the provision that "the commissioner or board at the head of each department is empowered to prescribe and to enforce regulations, subject to the approval of the governor and not inconsistent with law, for the government and administration of such department, the conduct of its employees, and the custody, use and preservation of the records, books, documents and property pertaining thereto."

The departmental heads have no independent power to create the personnel of their respective departments. It is provided, however, that each department is empowered to employ such assistance, clerical or otherwise, as the governor deems proper for its proper and efficient administration and, subject to his approval, fix the compensation to be paid therefor. It is safe to assume that in practice each department will control its own personnel, subject to the very general supervision of the governor. Vermont has no civil service system.

In the important matter of audit is found one of the most thoroughgoing features of the new system. The commissioner of finance receives, at such times and in such manner as he may prescribe, with the approval of the governor, reports from all the administrative officers of the state. Moreover, his department has full control over departmental accounting; may prescribe the forms of vouchers, accounts and the like to be used in the departments; may among other functions supervise accounts and expenditures, inquire into receipts and expenditures of public moneys, and the use and disposition of public property. In short, the law gives this department full and complete power of direction over all the formal details of finance administration in the several departments.

This general supervision should be highly valuable in enabling the department to perform the duty imposed upon it of investigating

duplication and efficiency of organization in the departments, and in formulating and putting into operation plans for their better coördination; it should also greatly aid the commissioner in formulating the budget for the governor-elect. The fact that he is in close touch with the commissioner of taxes, in the same department, should be to his distinct advantage in the work of budget-making.

From the foregoing summary it appears that the new scheme represents only a partial, but in important respects a thorough-going, reorganization. Some of the new departments are merely former administrative agencies rechristened. The acts have done away entirely with few officers or boards of major importance, but the total number of state officials has been substantially reduced. However, efficiency and economy have been sought more particularly in the regrouping of allied activities, in the concentration of authority, and especially in the increased supervisory and coördinating powers vested in the governor and commissioner of finance.

It should be noted in passing that no provision is made for an executive cabinet. Any recognition of the cabinet principle will be extra-legal, a by-product, so to speak, of the governor's general administrative responsibility.

The value of the new system cannot as yet be assessed; in fact, the consolidation acts were not fully operative until July 1, 1923. The commissioner of finance states that the number of employees has already been reduced fully ten per cent, and expresses his belief that the departments are coöperating better than heretofore, that the work is being done more efficiently and at considerably less expense.

The governor concurs in this view, emphasizing the reduction in the number of employees, the greater flexibility of the machinery of administration, and the elimination of an appreciable amount of red tape.

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Budgetary Legislation of 1923. Pennsylvania, Rhode Island and Missouri have had the distinction of being the only states without some sort of organized plan for making appropriations. The most important laws of 1923 relating to state finance have been those establishing budget systems in two of these states.[1] In Pennsylvania the

[1] In the 1922 elections, Missouri defeated a budget bill which was submitted to referendum. Budget provisions are included in the proposed constitutional amendments, to be voted on in February, 1924.

secretary of the commonwealth has been made the administrative officer. All departments and institutions, including the legislature and judiciary, are required to submit statements of appropriations, revenues and expenditures of the previous biennium with itemized estimates of revenues and expenditures for the succeeding two years. Any other information may be required by the secretary. These data are submitted to the governor as a basis for his estimates and he may alter any item after a hearing. The budget is submitted to the general assembly within four weeks after its organization and must contain the data submitted to the secretary, the governor's recommendations, the source and amount of revenues, together with the estimated amount to be raised by taxation. With the exception of the elective officers,—the auditor general, state treasurer and secretary of internal affairs, heads of all agencies receiving appropriations are required to submit estimates of money necessary for periods, determined by the governor, before such money is available to them. The governor may disapprove these estimates and cause a revised estimate to be prepared. The elected officers also submit statements of proposed expenditures, but the governor has no power of revision over them. These provisions are incorporated in the general reorganization of the administrative and executive work of the state.

The law of Pennsylvania follows the usual form for budget laws, but Rhode Island only authorizes the governor to participate in the preparation of appropriation measures and omits most administrative details. All departments and commissions, except the legislature and judiciary, are required to prepare annual estimates of income and needed appropriations with a statement of expenditures for the three preceding fiscal years. These statements are submitted to the governor and legislature. The governor may require additional information and may appear, or summon department heads to appear, before any legislative committee considering appropriations. The committees also have power to require attendance of department heads at their sessions.

A complete change has been made in the Vermont law. The former budget committee, which was composed of state officers and members of the legislature, has been abolished and in its place a responsible executive budget has been created. This law is also a part of the reorganization of the various activities of the state. The compilation of the budget is placed in the department of finance, the head of which is appointed by the governor. All spending agencies submit to the

department and to the governor statements of receipts and expenditures of the current biennium, and detailed estimates of requirements for the ensuing year. These are tabulated in the department of finance and submitted to the governor with a statement showing the financial condition of the state and an estimate of revenues. The governor may revise all estimates and submit a budget with his recommendations and the reasons therefor to the general assembly not later than the third Tuesday of the session. The submitted budget includes also definite recommendations on financing the expenditures proposed. The budget is referred to the appropriation committee, which prepares a general appropriation bill and introduces it for the action of the legislature.

In a reorganization in Tennessee the duties of the state budget commission has been vested in a department of finance and taxation with a director appointed by the governor. In the transfer there has been little change made in procedure. The budget is compiled from estimates submitted to the department after investigation submitted to the governor with recommendations on items. The governor submits his recommendations to the legislature not later than four weeks after his inauguration. The estimated revenue for the year is included in the budget and the legislature is required to keep within this amount. No money is available to departments until quarterly estimates have been approved by the governor.

The Alabama budget commission has been enlarged to include the chief examiner of accounts. The commission formerly consisted of the governor, the auditor and the attorney-general. The legislature arranged to share in the preparation of the budget of 1924 by creating a commission of five members of the house and three from the senate to sit with the budget commission during the recess, in order to present a well-defined plan for state expenditures. Investigation of county conditions with a view to the establishment of a county budget system was made a duty of this temporary commission.

The legislature of South Carolina has thought it necessary to try out some plan of procedure for its consideration of the budget, in order to hasten the final passage and thus leave more time for other matters, and by special resolution has provided for consideration of the 1924 budget. A recess of fifteen days, beginning the second Tuesday in January, is allowed during which all hearings on appropriation bills are to be held and the revenue measures drafted. Five days after reconvening, the ways and means committee shall introduce the

annual appropriation bill, which shall lie on the desks of the members for five days before final consideration.

Additional powers have been conferred on the budget commission of North Carolina, so that the true financial condition of departments may be ascertained. If deemed necessary, the commission may order the audit of a department, and may make any inquiry, compel production of papers, or examine employees under oath. It may call for any sort of financial statement from spending agencies, requiring departments, which receive money from taxes, fees or other sources, to make detailed monthly reports to the governor.

In Massachusetts the data submitted to serve as a basis for the preparation of the budget included an estimate of proposed expenditures and a financial statement of the previous year from all spending agencies, and a financial report from the auditor. To this is now added an estimate of revenues to accompany the estimate of expenditures.

In Idaho the compilation of the budget was formerly made in the office of the governor by the bureau of budget and taxation. The work has now been transferred, with no change of duty or routine, to a bureau of budget in the office of the state auditor, who is required to assist the governor in carrying out the existing provisions of the law.

While not strictly relating to budgets, creation of the office of state comptroller in New Mexico is important as the comptroller is given the usual duties of a supervisor of fiscal affairs, which is here extended to local as well as state finance.

Local Finance

Increased state supervision over local finance has received attention in a few states. Washington has created a budget system for both cities and counties. the two laws being similar, except for variation due to differences in form of city and county government. Spending agencies are required to submit estimates of revenues and expenditures to the auditor, who prepares the budget in the form prescribed by the state division of municipal corporations. The budget is then submitted to the legislative body for revision and action. Hearings are advertised at which any taxpayer may be heard, after which the budget is finally adopted and the taxes levied. Expenditures in excess of the budget are void. School districts of the state are also required to prepare a budget of expenditures, and to give an opportunity to the public to be heard thereon.

Ohio has revised and codified the laws of the state relating to the levy of taxes and the establishment of a budget system for local expenditures. The procedure remains substantially the same as under the old laws. A budget commission, composed of the county auditor, the treasurer and prosecuting attorney, may be replaced by an elected board of three citizens, if such a proposition receives favorable action by a majority of the electors. As before, the county tax levy is based on the budget submitted by boards of supervisors, boards of education, city officials, trustees of townships, and trustees of public libraries.

In Idaho a bureau of public accounts, with the Governor as chief officer, has been created in the auditor's office to perform certain duties formerly belonging to the department of finance. Of interest is the lessening of state supervision over county finances by discontinuing annual visits of inspection, thereby relying entirely on reports from county officials for information.

North Dakota county auditors have been relieved of the duty of preparing budgets. Estimates are submitted directly to the county supervisors, who make up the budget from these estimates and from a financial statement compiled by the auditor. Hearings are advertised at which any tax-payer may appear, the tax levy is made, and the budget becomes the guide for all expenditures.

Connecticut, in an act extending home-rule to towns, cities and boroughs, confers the power to establish and maintain a budget system.

Local finance committees, to supervise or actually to perform administrative duties relative to local finance and the budget, are permitted in a number of states. In Massachusetts it has been permissible for any town to provide for the appointment of an advisory finance committee to consider all municipal questions and make recommendations. The appointment of these committees is now compulsory for towns, whose valuation in apportioning the state tax exceeds one million dollars.

Michigan has granted permission to boards of supervisors in counties of from 150,000 to 500,000 population to appoint a finance committee with varied duties. The audit of claims, examination of books of county officers and the preparation of a budget are to be its financial activities. In the preparation of a budget it is allowed to make recommendations on submitted estimates.

Although not requiring the preparation of a budget by county officials, Iowa has established a check on county expenditures by making officials personally liable for expenditures in excess of revenues.

RUTH MONTGOMERY.

New York State Library.

Constitutional Amendments in Arkansas. The Arkansas legislature has submitted three proposed amendments, all the constitution allows at one time, to be voted on in 1924. The first allows the legislature to increase the number of supreme court judges to seven, and to provide that the court sit in two divisions. In all cases where the construction of the constitution is involved the court must sit *en banc*. In case any judge sitting in a division dissents from the decision, the case shall, upon request of the chief justice or of the dissenting judge, be transferred to the court *en banc*. The amendment, if adopted, will increase the salaries from $4000 to $7500. Substantially the same amendment has already been submitted twice, but failed of adoption because it did not receive a majority of the total vote cast.

The second amendment requires that the fiscal affairs of cities and counties be "conducted on a sound financial basis," and forbids fiscal agents to make any contracts or issue warrants in excess of the revenue. Any officer found guilty of violating this provision shall be subject to a fine of not less than $500 nor more than $10,000, and shall be removed from office. In order to secure funds to pay debts outstanding at the time of the adoption of this amendment, cities and counties may issue bonds, and for their redemption may levy a tax, in addition to that now allowed of five mills, of not to exceed three mills, until such indebtedness is paid.

On the overthrow of the carpet-bag government (1874), cities and counties were allowed to issue bonds to take up outstanding debts, but were forbidden to issue any more. However, they were not forbidden to exceed the revenue, and may now have large floating debts in consequence of which the "scrip" is at a discount. The second amendment is designed to cure that evil. But it will not authorize cities to issue funds for improvements; for that, they will still have to depend on the improvement district system. A proposition to allow cities to issue bonds has failed of adoption twice.

The third amendment forbids the passage of any local bill by the legislature, but allows municipalities and counties to make use of the initiative and referendum, to be regulated by a general law passed by the legislature subject to the following safeguards: The number of signatures necessary to initiate a local bill is to be fifteen per cent of the vote cast at the previous election for mayor in cities, and for circuit clerk in counties; the time allowed for filing an initiative petition shall not be less than sixty nor more than ninety days; for a referendum petition, not less than thirty nor more than ninety days after the passage of the measure by a municipal council.

In 1920 a new initiative and referendum, proposed through the initiative, including the above provision for counties and municipalities, received a majority of the vote cast on the measure, but not a majority of the total vote, and was declared not adopted. In 1922 the same measure was overwhelmingly defeated. One objection seriously brought against this measure in 1922 was the provision giving the initiative and referendum to counties and municipalities.

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Changing the Date for Congressional Sessions and Inauguration Day. What are the most feasible dates for the beginning and ending of Congress? This is a problem which has engaged the attention of legislators since the first days of the republic. The Constitution states that Congress shall meet on the first Monday in December every year (Art. I, Sec. 4, Cl. 2) but does not specify when the terms of the members shall begin and terminate.

On September 12, 1788, the Continental Congress launched the new Constitution by a resolution which read:[1]

"Resolved that the first Wednesday in January next be the day for appointing electors in the several States; that the first Wednesday in February next be the day for the electors to assemble in their several States and vote for President, and that the first Wednesday in March next be the time and the present seat of Congress the place for commencing the proceedings under the said Constitution."

The first Wednesday of March fell on the 4th and thus the members of Congress began their term of office on that date. Serving for two years, the term prescribed by the Constitution, (Art. I, Sec. 2, Cl. 1) their term expired March 4, 1791, so March 4 accordingly became the official date for the ending of each Congress. That this date was not wholly satisfactory is evidenced by the fact that as early as 1795 an amendment was introduced to change the term of Congress so as to have it end June 1. In 1808 a resolution was presented providing that Congress should sit for but one year and that the term should expire on the first Tuesday in April. In 1840 a resolution declaring December 1 as the commencement of the term of members was proposed. From 1876 to 1889, eighteen amendments were introduced covering the subject of time of the sessions of Congress. From 1889 to the present sixty-five

[1] *Journal of Continental Congress.* Vol. IV, p. 867.

attempts have been made to alter the beginning and ending dates of Congress. Eighteen of the resolutions provided that the congressional term, with the presidential, should begin and end on April 30, instead of March 4; nineteen others extended the terms to the last Wednesday or Thursday in April; one gave the first Tuesday in May as the pivotal date for the presidential and congressional terms, and one March 30. The others provided that Congress should assemble immediately after the election, one indicating the first Monday in October as the beginning date of each Congress; another the first Monday in December following the election; and the remaining twenty-six giving some day in the first or second week in January.

The primary argument made by those desiring a change in the beginning date of Congress is that, as now constituted, it does not actually begin until thirteen months after the members have been elected. It thus frequently happens that issues upon which they have been elected have been settled by the old Congress or put into such a condition as to make adjustment doubly difficult.[2] For nine months there is no speaker of the House and the shortness of the second session often prevents the passage of important measures.[3] It is also claimed that congressmen who have been defeated for reëlection have the opportunity during the session after the election to vote, without responsibility, for private legislation in which they will secure some personal gain.[4]

From 1886 to 1893 Mr. Crain from Texas introduced eleven resolutions seeking to amend the Constitution so as to have December 31, instead of March 4, as the beginning and termination of the official term of members of the House of Representatives and Senate, and providing that Congress should hold its annual meetings on the first Monday in January. On April 30, 1892, the House committee on

[2] *House Report* No. 543, 52nd Congress, 1st Session. This report states: The Republicans carried the Congressional election in 1888, while the Democrats were victorious in 1890, yet the Mills Congress in one instance, and the McKinley Congress in the other, continued to legislate for the country although repudiated at the polls.

[3] *House Report* No. 543, 52nd Congress, 1st Session. This report states: Due to lack of time the deficiency bill of the 2nd Session, 49th Congress failed of passage.

[4] Beard, Charles A. *American Government and Politics*, p. 249. Mr. Shafroth, an ex-Congressman, speaking of the second session, said: "It is then that some are open to propositions which they would never think of entertaining if they were to go before the people for reëlection. It is then that the attorneyship of some corporation is often tendered, and a vote is afterward found in the Record on favor of legislation of a general or special character favoring corporations."

election of President, Vice-President and representatives in Congress, with complete unanimity, favorably reported one of these Crain resolutions (House Resolution 98). Speaking on the resolution Mr. Crain pointed out that a constitutional amendment, and not merely a law, is needed to change the term, because the action of the Convention ratified by the Congress has fixed it as a part of the Constitution that the terms of the members of Congress begin and terminate on March 4.

Mr. Hooker of Mississippi was in favor of the ends to be attained by the amendment, but by reason of the great delay attendant upon the ratification of a constitutional amendment, maintained that the same results could be achieved through a law merely changing the date Congress is to meet from the first Monday in December to the first Monday after the fourth day of March. This would give two sessions of equal length with no considerable gap between the election day and the swearing in of the new members. He introduced a bill to this effect, House Resolution 9731.

Mr. Cochran of New York, opposing the joint resolution, stated that it would be highly unwise to have any presidential contest decided by a Congress that was elected at the same time with the President. This is what would happen should the election of the President devolve upon the House of Representatives, for under this new scheme the new Congress would meet in January and the President would be inaugurated in April. Had this system been in effect in 1876, in the famous Hayes-Tilden contest, the "same forces that had raised the dispute about succession to the presidency would have been able to foment disputes about the complexion of the new Congress, so that you would have had two Congresses competing for regularity."[5]

Mr. Reed of Maine, also opposed, declared that our system of government did not intend an immediate response to the opinion of the people, but that our "institutions are formed upon the idea that the careful determination of the people of the United States well stuck to shall be the law of the land; not the opinion of one election; but the opinion of a series of elections."[6] On January 10, 1893, the resolution was put to a vote and failed of passage, 49 yeas to 128 nays.[7]

In introducing Senate Joint Resolution No. 83 on January 14, 1898, Senator Hoar of Massachusetts pointed out that omitting the Christmas

[5] *Congressional Record*, Vol. 24, Pt. 1, p. 489.
[6] *Ibid*, p. 495.
[7] *Ibid*, p. 499.

holidays and Sundays there were only about sixty-five days left for business in the short session, too short a time for the proper consideration of any but the great appropriation bills of which there were eighteen. On the other hand, the first session of each Congress, on account of the volume of business to be transacted, was prolonged for six, seven or eight months. He proposed to amend the Constitution so as to substitute April 30 for March 4 as the official date for the beginning and termination of the congressional term, thus equalizing the work of the two sessions by taking some of the burden from the first and adding it to the second.[8] His resolution passed the Senate May 10, 1898,[9] and was referred to the House committee on judiciary,[10] from which it did not emerge.

The argument advanced by Senator Hoar with regard to the shortness of the second session was answered by Mr. Driscoll of New York in the consideration of House Joint Res. No. 115 in the Sixty-first Congress. He claimed that the time intervening between the first Monday in December and the fourth of March was sufficient in which to pass the supply bills, and "that is about all that Congress composed of many members who are really not responsible to their constituents should do. When the members are still in office and hope for reëlection, and when they are more inclined to be responsive to the wishes of their constituents is the time for constructive laws and new legislation."[11] This resolution (H. J. Res. No. 115) was introduced by Mr. Henry of Texas and provided for the last Thursday in April as the pivotal date for the presidential and congressional terms. On January 15, 1910, it was recommitted to the committee on judiciary and was reported back under House Joint Res. No. 174,[12] for which it was substituted. On May 16, 1910, it came to a vote, and lacking the necessary two-thirds majority, the resolution was lost, 138 yeas to 73 nays.[13]

Senate Joint Resolution No. 10, providing for the first Monday in January as the official date for the beginning and ending of the congressional term, and the second Monday in January for the presidential term, introduced in 1913 by Senator Shafroth of Colorado, was unfavorably reported by the committee on judiciary.[14] The minority members

[8] *Congressional Record*, May 10, 1898, p. 4763.
[9] *Ibid*, p. 4772.
[10] *Ibid*, p. 4827.
[11] *Congressional Record*, Jan. 14, 1910, p. 646.
[12] *House Report* No. 369, March 16, 1910, 61st Cong. 2nd Sess.
[13] *Congressional Record*, May 16, 1910, p. 6368.
[14] *Senate Report* No. 212, 63rd Cong. 1st Sess.

of the committee reported the need for such a change, declaring that with Congress not meeting until thirteen months after its election, "it is unfair to the administration that the legislation which it thinks so essential to the prosperity of the country should be so long deferred." The call of an extraordinary session does not meet the difficulty, since it is usually limited to the consideration of one or two subjects which "make enormous waste of time of each House, waiting for the other to consider and pass the measure." The minority further criticized the present system by referring to the contests over seats in the House of Representatives. Decisions on these contests are seldom given until about one-half of the term has expired, and sometimes as much as twenty-two months. For all this time the occupant draws the salary, and when his opponent is seated he also draws the salary for the full term, so that the government pays twice and the district is misrepresented. With Congress "meeting the first Monday in January succeeding the election, contested election cases could be disposed of at least during the first six months of the Congress."[15] This resolution did not come to a vote.

From what has already been said it is apparent that some change in the dates of the congressional terms is desired, but there is a great variety of opinions as to what constitutes the best change. In the discussion of House Joint Resolution No. 174, in 1910, Mr. Parker of New Jersey said that he preferred the House to meet in December, the Senate in March, and the President to be inaugurated in April, but since it was so difficult to get a consensus of favorable opinion on such a variety of dates he was willing to accept the last Thursday in April as the pivotal date for the congressional and the presidential terms.[16] And it is possible that, eventually, some day in the last week of April will be the chosen date. This will add six or seven weeks to the present short session and, if necessary, Congress can arrange by law to meet in the latter part of November instead of the first Monday in December, thus making the last session of each Congress of sufficient length to consider properly all matters which may come before it.

The objection against having Congress meet immediately after an election, that is, within two or three months, rests mainly on the theory that good legislation depends upon deliberation, and that there is a dangerous tendency in having new members fresh from the speeches and excitement of a campaign, make laws that are to remain permanently on

[15] *Senate Report* No. 212, 63rd Cong. 1st Sess.
[16] *Congressional Record*, March 16, 1910, p. 3264.

the statute books of the nation.[17] There is also the opinion that should a presidential election be thrown into the House of Representatives for decision, it is better to have the members of a preceding Congress determine the choice, rather than the members of the new Congress whose right to sit may be questioned as much as the authority of the presidential electors.[18]

CHANGING DATE OF INAUGURATION DAY

With the movement to change the time of the sessions of Congress there has been coupled the agitation for a change in the date of Inauguration Day. In fact a good many of the amendments covering either subject include the other.

The many attempts made to change the date of Inauguration Day have been based mainly upon two grounds: first, to have the inaugural day come in a more favorable season of the year; second, to have the President's term fit logically into the plans for changing the beginning and ending dates of the Congress.

In 1876 a resolution was introduced in Congress endeavoring to change the date of Inauguration Day to May 1. In 1886 an attempt was made to change the date to April 30 so as to have it fall on the anniversary of Washington's first inauguration. In 1889 another amendment was introduced fixing the last Tuesday of April as inaugural day, this occurring on April 30 in that year, so that the one-hundredth anniversary of Washington's first inaugural could be celebrated to the day.

Since 1889, fifty-two amendments have been presented in some form or other attempting to change the date of Inauguration Day. Eighteen have designated April 30 as the inaugural day, five have designated the last Wednesday in April, fourteen the last Thursday in April, two the first Tuesday in May, twelve some day in the early part of January, and one the second Monday in December.

Although March 4 has generally proven itself a bad day for the ceremonials and pageants attendant upon the installations of the new president, the difficulty in changing the date has been in the inability of Congress to agree on any certain date in the spring as being more conducive to good weather. In the consideration of Senate Resolution 83 on May 10, 1898, after Senator Hoar had spoken of the inclement and disagreeable weather of the preceding inauguration days, and had pleaded for the more agreeable date provided in his resolution, the last Wednesday

[17] *House Report* No. 769, 55th Congress, 2nd Session.
[18] *Congressional Record*, Jan. 10, 1893, pp. 483–500.

in April, Senator Perkins of California showed by reports from the Weather Bureau that from 1873, when the Weather Bureau was established, to 1897 inclusive, the only advantage of the last Wednesday in April over March 4 seemed to be that on three of the April days there were high winds and threatening weather in place of snow or sleet, the other days having matched up about evenly on good and bad weather.[19]

Another objection to the last Wednesday in April, or any particular day of the week, is that it would cause a change from term to term in the exact number of days in the term. The Constitution states the President's term to be four years, (Art. III, Sec. 1) but as week-days by name advance in date from year to year the term of one incumbent would be less than four years, while his successor's would be more than four years.[20] In answer to the contentions of the sponsors of the resolution that it would obviate the difficulties and inconveniences consequent upon March 4 falling upon Sunday, it was shown that in about 200 years it occurred on Sunday but six times,[21] this infrequency being ascribed to the peculiar results attendant upon Inauguration Day coming in the year following leap year.

There has been much discussion in Congress as to whether it is necessary to change the date of Inauguration Day by a constitutional amendment, the Constitution proper specifying no exact date for the inauguration. Those in favor of the constitutional amendment maintain that since the President's term was fixed at four years by the Constitution, an extension or curtailment of that period, which would be necessitated by a change in the inaugural date, could only constitutionally be effected by an amendment.

During recent years the resolutions have tended toward having the President begin his term of office some time in January, irrespective of weather conditions. This is due probably to the fact that most of the gubernatorial inaugurations throughout the country occur in January, and also to the fact that in unusually severe weather the inaugural ceremony can be held in the Senate chamber, as was done on March 4, 1909, when President Taft was inaugurated.

Despite the great number of resolutions attempting a change of date in the inaugural day only six ever came to a vote, the Senate passing such a resolution four times, and the House rejecting similar resolutions twice.

[19] *Congressional Record*, May 10, 1898, p. 4763.
[20] *Ibid*, p. 4772.
[21] 1821, 1849, 1877, 1917, 1945, 1973.

The history of these resolutions indicate the impossibility of a constitutional amendment ever being adopted merely for the purpose of furnishing a pleasant day for inaugural ceremonies, there being much objection to "tinkering with the Constitution,"[22] for the purpose of "turning it into a weather vane."[23] It is more probable, however, that in adjusting the congressional term, the date of inauguration will be changed to fit better into the new plan finally chosen.

Despite the variety of opinion as to what constitutes the best calendar arrangements for the transaction of governmental business it seems probable that the Sixty-eighth Congress will witness the passage of an amendment to the Constitution designed to change the beginning and ending dates of the congressional and presidential terms. This opinion is based upon the activities in the closing days of the fourth session of the Sixty-seventh Congress, which indicate that efforts in this direction will be renewed with good prospects for success. The resolution on this subject, passed by the Senate in February, 1923, might have been favorably accepted by the House had it not arrived there so late in the session as to render adequate consideration impossible.

This particular resolution was introduced by Senator Norris of Nebraska on December 5, 1922, and was submitted as a substitute for Senate Concurrent Resolution No. 29 presented by Senator Caraway of Arkansas on November 22.[24] The latter resolution was the first one

[22] *Congressional Record*, 52nd Cong., 2nd Sess., p. 483. Mr. English of N. J.

[23] *Congressional Record*, March 16, 1910, p. 3264.

[24] Senator Caraway's resolution read as follows:

"Whereas this is a representative Government speaking for and interpreting the will of the people of the United States as expressed at the polls; and

"Whereas no Representative in either branch of Congress has the moral right to support or vote for any measure which the people by their votes have repudiated; and

"Whereas certain proposed legislation affecting a fundamental change in our economic and commercial policy is now recommended by the Executive for consideration by Congress; and

"Whereas this proposed legislation has failed to receive the approval of the voters as evidenced by the elections recently held; and

"Whereas Congress has been called into extraordinary session for the purpose of passing this legislation which the people have by imperative and unmistakable mandate repudiated; and

"Whereas a Congress which adopts legislation in defiance of a popular mandate to the contrary would perpetrate an act of usurpation; and

"Whereas many advocates of the ship subsidy bill in the present Congress have been rejected by emphatic majorities by their constituents; and

"Whereas it is unwise to place in the hands of rejected public servants the power to adopt fundamental legislation; and

of its kind ever presented in Congress, and was based upon the assumption that legislators who were defeated at the polls in November should not vote afterwards on matters which had presumably been issued in the pre-election campaign. The bone of contention at this time was the Ship Subsidy Bill.

Senator Caraway's resolution had been referred to the committee on agriculture and forestry and was reported back to the Senate on December 5, 1922, with the explanation that the passage of such a resolution "would interfere with the constitutional right and privilege of many members of Congress." That under the Constitution "a Member's right, if not his duty, to participate fully in all legislation up to the close of his constitutional term can not be questioned."[25]

The report went on further, however, to say that the resolution showed "a very serious defect in some of the provisions of the Constitution," which defects should be remedied by means of a constitutional amendment providing for the convening of Congress and the inauguration of the President soon enough after elections to bring about legislation reflecting the opinions of the voters as expressed at the polls. Accordingly, an amendment was presented stipulating that the presidential term should begin the third Monday in January after the presidential election; that the President and Vice President should be elected directly by the people without the intervention of electors, although still retaining the electoral ratio among the states; that senators and representatives should take their oath of office on the first Monday in

"Whereas a sense of official propriety would suggest to the defeated Members the unwisdom of participating in legislation which, if enacted, would materially affect fundamental questions of public policy; Therefore be it

"Resolved, etc., I. That it is the sense of the Senate of the United States that all Members defeated at the recent polls abstain from voting on any but routine legislation, such as necessary supply bills, motions to adjourn, or motions to recess, and such other legislation as does not involve any material change of national policy.

"II. That chairmen of committees, not in sympathy with the people's wishes as expressed at the polls, and which have an important effect on legislation, resign from their respective chairmanships, so that their places may be filled by those who are known to be willing to carry into legislative effect the mandate of the people as expressed at the polls on the 7th day of November, 1922.

"III. That the Senate of the United States reaffirm their readiness to bow to the people's will, when expressed at the polls, and declare that the vote of want of confidence in the leaders which has been registered shall not be disregarded." *Congressional Record*, Vol. 64, Part 4, page 3495.

[25] *Congressional Record*, Vol. 64, Pt. 4, page 3505.

January following their election; that Congress should meet at least once a year on the first Monday in January, unless they chose by a law a different date; and that the President, senators and representatives in office upon the adoption of the amendment should relinquish their offices the third Monday and first Monday, respectively, in January preceding the March 4, which would otherwise mark the termination of their incumbencies.[26]

On February 12, 1923, when the resolution came before the Senate for debate, Senator Norris explained that since the time before the close of the session was short, and as there might be some opposition to the plan for the popular election of President, which would unduly delay and perhaps defeat the passage of the whole resolution, he had decided to omit that feature from the resolution. Accordingly the debate was restricted to the remaining provisions of the resolution. The speeches covered generally the same arguments as on previous occasions on the same subject. The argument which was stressed more than any other was that regarding the voting of legislators who has been repudiated at the polls.[27]

The lack of opposition was remarkable, and when the amendment came to a vote on February 13 it was passed by a majority of 63 to 6.

The resolution as passed read:[28]

"Section 1. That the terms of the President and Vice President of the United States elected after the adoption of this amendment shall commence at noon on the third Monday in January following their election.

Section 2. That the terms of Senators and Representatives elected after the adoption of this amendment shall commence at noon on the first Monday in January, following their election.

Section 3. That the Congress shall assemble at least once in every year, and such meetings shall be on the first Monday in January, unless they shall by law appoint a different day."

[26] *Congressional Record*, Vol. 64, Pt. 4, pp. 3505–37.

[27] On this Senator Robinson of Arkansas said: "If it is desirable that the impulse and the impetuous demand for reform sometimes reflected in elections shall not be too promptly responded to, it is of even greater importance that when a question has been made an issue in a political campaign, when the voters have registered their decision and judgment affecting it, those who have been discredited and defeated shall not be permitted to defy the power which exalted them and override the will of the constituency by whose favor they enjoy public office." *Ibid*, p. 3494.

[28] *Congressional Record*, Vol. 64, Pt. 4, p. 3540.

On February 14 the resolution was referred to the House committee on election of President, Vice President and representatives in Congress.[29] Some minor changes were made, namely, that the presidential term should begin January 24 and the congressional term January 4; that Congress should meet at least once every year on January 4, and that in the event a President or Vice President is not selected before the time fixed for the beginning of the presidential term, Congress may declare who shall act as President until the House of Representatives chooses a President or the Senate chooses a Vice President.

On February 22, 1923, the amended resolution was put on the House Calendar,[30] a request was made for a special rule under which the resolution might be considered, but owing to the lateness of the session the chairman of the committee on rules declined to approve such a rule. The amendment thus died, but that it will be reintroduced in the Sixty-eighth Congress there can be little doubt.

MICHAEL ANGELO MUSSMAN.

Philadelphia, Pennsylvania.

[29] *Ibid*, p. 3648.
[30] *Ibid*, p. 4341.

REPORTS OF THE NATIONAL CONFERENCE ON THE SCIENCE OF POLITICS

HELD AT MADISON, WISCONSIN, SEPTEMBER, 3–8, 1923

INTRODUCTION

Those who have been following the work of the committee on political research cannot escape the conclusion that the great need of the hour is the development of a scientific technique and methodology for political science. When one considers the number of pressing problems in the fields of politics and administration, and the scarcity of scientifically gathered data that is available as a basis of intelligent discussion, the seriousness of the situation becomes apparent. Moreover, most of these problems require immediate action. This means that every-day decisions of great public importance must be made without adequate knowledge of the facts and theories that are involved. Consequently it is small wonder that legislative and administrative action is too frequently the result of guess-work and speculation rather than of precise knowledge and scientifically determined principles.

A study of the legislative product of the several states will convince even the casual observer of the imperative need of the development of a body of sound principles of legislation as a guide to legislative activity, the observance of which would avoid much useless litigation, many abortive statutes, and eliminate much needless friction. In other words, the formulation and observance of such principles would tend to produce statutes that would be enforcible, intelligible and practicable. The brilliant work of Professor Freund in opening up this field of political research has amply demonstrated its value and feasibility. What is true of legislation is doubtless true of the other fields of politics. The whole scheme of governmental activity requires a body of scientific political principles for even reasonable efficiency and success.

It is the function of political science to provide this science of politics. Those in charge of public affairs rarely have the time and opportunity for political research. This throws the burden primarily upon the teacher and the scholar. There is a considerable body of

literature produced by this group, but most of it is historical and descriptive, and very little of it is analytical and statistical. Obviously there can be no real science of politics until we have developed a fact-finding technique that will produce an adequate basis for sound generalization. This raises problems of method and technique, both in finding the facts and in drawing conclusions. Until these problems are more vigorously and successfully attacked, political science cannot make any substantial contribution to the success of our political democracy.

It was this feeling that led to the organization of the National Conference on the Science of Politics. At the meeting of the American Political Science Association at Chicago in 1922, seventeen members met at the call of the writer, launched the project of a conference on methods of political research, and placed the organization and management in the hands of an executive committee of the following five members: Mr. Frederick P. Gruenberg, Professor A. N. Holcombe, Professor C. E. Merriam, Dr. Luther Gulick, Secretary, and Professor Arnold Bennett Hall, Chairman.

The conference was held in Madison, September 3–8. It was composed of ninety-three members and a number of visitors. The members represented twenty states and forty-two different institutions. It was the opinion of the committee that the problem of scientific method could not be solved by a frontal attack, but rather by a comparison and analysis of different methods of research as applied to some specific objects of investigation. Consequently, the conference was divided into eight round tables. To each round table was assigned a specific project or subject, and every member was required to work only with the group to which he had been assigned.

The task set to each group was two-fold: First, the determination and formulation of the outstanding problems presented by the subject assigned; and, second, the methods by which the objective evidence, essential to the scientific solution of the problems, could be secured and accurately interpreted. This latter task involved several questions such as the following: What evidence is material and relevant? What evidence is now available or could be made available? How can such evidence be collected? How should it be handled and interpreted? It is in the solution of this type of problem, involving inventive ingenuity, imagination, powers of analysis and synthesis, a wide range of knowledge and practical experience, that the exchange of ideas and the stimulus of mutual criticism and suggestion of a round-table discussion seems to reach maximum efficiency.

In order to lead the groups to some definite tho tentative agreement, each round table was required to report its findings at a plenary session, attended by all the members, and held every evening. The first two days of the session, the groups seemed unable to visualize their problems. There was an impulse to get away from the question of method and to stray into the field of general prudence, opinion and speculation. Under the stimulating criticism of the evening session and the united efforts of the directors, these difficulties seemed to disappear and the last half of the session found the members coming to grips with the real problems of the conference in a truly effective fashion.

It would be difficult at this time to estimate accurately just how much was accomplished, but the conference seemed to justify itself in the minds of its members, a unanimous vote being cast in favor of a similar meeting in 1924. Perhaps the most significant evidence of the value of this conference is to be found in the fact that a number of members are using the reports of their round tables as the basis of seminar instruction, and are finding them exceedingly useful. Most of the groups have devised means by which the members may exchange notes during the year on the results of their investigation, following out the plans adopted. They intend to report the results of their experience at the conference of 1924. In this manner it is planned that the value of the suggestions formulated may be tested out by actual experience.

The reports of the round tables which follow represent the tentative conclusions of the groups after five days of intensive conference. They are published here in the hope that they may be both suggestive and stimulating to those intrusted with putting political research upon a scientific, objective basis. If they seem hopelessly inadequate to the needs of the hour, one may find comfort and hope in recalling how elemental and naive the simple technique now seems which ushered in the application of the new philosophy to the problems of material science. The marvelous technique of these sciences has proved of incalculable benefit to civilization. But who will deny that the perfection of social science is indispensable to the very preservation of this same civilization.

Some system of social control which will guide humanity by its intelligence rather than by its passion, by which the true course of social progress may be more prophetically discerned; in short, which causes mankind to become the creator rather than the helpless creature of destiny is essential if civilization is to survive the caprice of ignorance and passion. However humble the present achievements may be in

developing a technique of politics, the significance of this technique cannot be ignored, and the hope of the future lies in a continuous and insistent struggle to devise a technique adequate to the tremendous problems of modern life.

The next meeting of the National Conference on the Science of Politics will be held September 8–12, 1924, the place and program to be announced later.

ARNOLD BENNETT HALL,
Chairman.

ROUND TABLE I. PSYCHOLOGY AND POLITICAL SCIENCE

The proceedings of the round table on Psychology and Politics may be summarized as follows:

The first meeting was devoted to a general discussion and definition of the problem of the round table, namely, the possibility of more intimate relationship between the study of politics and the study of psychology. Attention was first directed to the earlier development of psychology in the thinking of the classic political theorists, and then to later reasons for recent interest in the psychological basis of political action. Immediate incentives to closer study of the psychological bearings of politics were found in the desire for a closer understanding of political behavior, as seen in recent surveys and analyses of political activity, and in recent developments of mental tests from which broad social and political implications have been drawn. In the first session there was also a general discussion as to the most suitable method to be pursued by the round table in the prosecution of its inquiries.

In the second session, Professor Hull of the department of psychology of the University of Wisconsin discussed the transition of psychology from the period of speculation to that of experiment. In this connection he dwelt upon the work of Darwin and Galton in biological research, the epoch-making advances of Wundt and Ebbinghaus, especially the latter's study of memory, the use of statistical presentation, the work of Binet in devising tests for school children, the speculations of Jung and Freud in the field of psychoanalysis, and the development of the behavioristic psychology in recent years.

Professor Hull continued in the third session his discussion of the development of psychology, and the material presented by him was analysed by the group. The significant point developed was the difficulty experienced by psychologists in finding the mechanism for measure-

ment of mental traits and processes that defy accurate or experimental analysis. The analogy between psychological philosophy and political philosophy was sharply accentuated and the possibility of the development of experimental politics was considered at length. In the same session Dr. Harold F. Gosnell of the University of Chicago gave a report on the political applications of psychology to government, particularly with reference to the use of psychology in army tests, in the courts and in certain institutions. The purpose of this report was to present for discussion specific instances of the use of psychology in connection with the political process.

The fourth session was held jointly with the round table on Civil Service. Mr. E. M. Martin of the National Institute of Public Administration presented for discussion the mental tests for the selection of policemen in Newark, N. J. This process consisted, briefly stated, in a differential rating by their superior officers of some thirty policemen, in the analysis of the quality or traits of efficient policemen, the application of these tests to the policemen rated, and in the correlation of the results reached with the original differential rating. This report, which will appear in the *Journal of Criminal Law and Criminology*, was made the subject of discussion and analysis by the joint round tables.

In the fifth session, Dr. O. G. Jones of Toledo University led a discussion centering around the Lippman-Terman controversy over the significance of mental tests in appraising some of the qualities of modern democracy. Dr. Jones questioned some of the social, political and cultural implications frequently drawn from these tests, and also considered the limitations of their application. The significance of mental tests in connection with the general theory of democracy was discussed at some length. The necessity of caution and restraint in drawing political conclusions from mental tests in their present stage of development was emphasized by the consensus of opinion among the members of the round table.

A further discussion of this topic was carried on in the sixth session when Dr. Jones concluded his report. Professor John M. Gaus of the University of Minnesota then led a consideration of the relation of social psychology to the study of government. He emphasized the dangers involved in speculative social psychology, in the confusion arising from the muddled doctrine of instincts, and in the difficulties common to armchair social philosophy disconnected from an ample body of statistical material. Special attention was directed to the

utility of the settlement studies made by Woods, Addams, Simkohvitch, Wald and others. For the present the student of politics, Professor Gaus believes, should preserve a critical attitude toward attempts to establish any social psychology that diverts attention from careful observation of habits, cultures and institutions. A discussion then followed of the tendencies in the recent development of social psychology, and of the relation of this movement to the study of political phenomena. Dr. Gosnell and Professor Merriam next outlined the study of non-voting now being conducted at the University of Chicago, as a somewhat extended observation of political behavior with an attempt at statistical interpretation. Briefly stated, the method of inquiry developed was to secure the judgment of several hundred political experts and of several thousand non-voters, to examine the registration books for significant data as to voters and non-voters, and to study numerous individual cases. From this information an effort will be made to ascertain typical situations in which non-voting occurs.

At the seventh session Professor Stratton's outline of the "Psychology of International Relations," presented by Professor Saby of Cornell, was discussed. This outline was examined as an interesting illustration of the rich possibilities in the field on the border between psychology and politics, notwithstanding the inadequacy of the technique thus far available. Mr. Theodore A. Johnson of Youngstown, Ohio, read a paper on "The Rôle of the Emotions in Creating and Interpreting Law," pointing out that the successful lawyer was a psychologist by rule of thumb at least. A general discussion followed on law as a field of study for psychologists.

The eighth and ninth sessions were occupied with specific discussion of plans for further investigation. Professor Merriam suggested that the following seemed to be basic and fruitful lines of advance:

A. Intensive studies of the political conduct of individuals or groups by means of biographies, personal observations, introspective analyses, and correlations with diverse social factors.

B. Development of mental measurement to include other qualities of temperament, particularly political qualities and characteristics.

C. Study of attitudes so as to develop patterns of political disposition or tendency, and to show the correlation of these patterns with physical or social environment and political training.

D. Detailed analysis of political interests with reference to their genetics and measurement as to strength and direction; also with reference to their correlation with environmental factors.

E. Large-scale statistical studies and correlations of political conduct of individual or group with social facts such as age, sex, race, economic status, mobility.

These lines of inquiry were discussed and various types of tests, such as those of Pressy, Hart, Moore, Achilles, Cohs, Downey and others, were examined with reference to their applicability to proposed types of political inquiry. Tentative outlines of several specific investigations were constructed for trial purposes to determine a definite method of approach to an admittedly difficult situation. The round table agreed to recommend to the Conference the value of detailed studies of

1. Citizenship, with reference to analysis and measurement of specific traits of citizens.
2. Electoral phenomena generally, and specifically non-voting.
3. Analyses of referendum votes considered in connection with social, economic and political environment.
4. Studies of public opinion.
5. Political autobiographies and biographies.

Experiments in these fields, it was agreed, would be made as far as possible by members of the round table during the current year, and methods and results interchanged. The possibility of making citizenship tests of various types was particularly emphasized.

The chief value of these sessions was the unusual opportunity for considering possibilities in scientific study of the political side of human nature. Opportunity was afforded for canvassing a number of experiments of this type, and also for outlining other tentative inquiries on the border line between politics and psychology. It is believed that significant advances were made toward more scientific study of traits of human nature underlying political action, and of the processes that in reality constitute government. From a continuation of such efforts genuine progress in the study of politics is likely to be made.

CHARLES E. MERRIAM.

ROUND TABLE II. PROBLEMS AND METHODS IN CIVIL SERVICE WITH SPECIAL REFERENCE TO EFFICIENCY RATINGS

The attention of the round table was turned to three problems which apparently fell within the scope of the program of the conference, and which at the same time are of major importance in civil service administration. The problems were (1) measurement of the efficiency

of the civil service commission; (2) application of modern testing methods to the selection of employees; and (3) ways and means of successfully operating an efficiency rating system. The considerations and conclusions of the round table will be discussed in the above order.

I. Appraising the Work of the Civil Service Commission

The controlling purpose of the conference was the development of methods whereby various branches of public administration might be subjected to objective tests or measurements. The possibility of working out such tests for the use of the civil service commission seemed particularly promising because a commission deals so largely with measurable units, whether it be examinations, appointments, hearings, or dollars and cents.

The initial step in passing judgment on the work of the commission was the analysis of its functions and the distribution of such functions into (1) normal or primary, unusual or secondary functions, and (2) into measurable and non-measurable functions. For practical purposes this distribution was made in a tentative and necessarily arbitrary way. It is anticipated that the normal functions will ultimately be determined by detailed analysis of the functions prescribed in a large number of civil service laws. By referring to the frequency of occurrence a grouping into primary and secondary functions will be feasible. A further distribution was made into measurable and non-measurable functions, since there are obviously certain quality-factors that cannot easily be subjected to measurement in standard units. It was anticipated that there would be a sufficient number of measurable factors to make comparisons possible and to justify sound conclusions. In other words, it is believed that there are a number of measurable primary functions which, when taken together, will be indicative both of the character and relative efficiency of comparable civil service commissions.

After the determination of the factors, the units of measurement for the various items were considered. The following table brings together a grouping of these measurable primary functions and the several units of measurement proposed:

STATISTICAL APPRAISAL OF THE ACTIVITIES OF THE MUNICIPAL CIVIL SERVICE COMMISSION

(TENTATIVE)

The data to be given for the fiscal year 1922–23 or for the calendar year 1922.

I. *General Information*

1. Total number of employees on city payrolls at end of year
2. Total number of employees in classified service
3. Total number of employees in non-competitive class
4. Total number of employees in exempt class
5. Total number of employees in labor class, if classified
6. Total payroll for classified employees

II. *Civil Service Commission (Staff and Expenditures)*

A. The Commissioners

7. Number
8. Aggregate salary
9. Salary of president
10. Aggregate length of service to date
11. Total number of hours for all commissioners in typical week
12. Total appropriation for year

B. The Staff

13. Total number of employees
14. Total number of employees in classified service
15. Aggregate salary of staff
16. Aggregate length of service

III. *Administrative Functions*

A. Publicity

17. Total expenditures for publicity in newspapers, magazines, bulletins, circulars, notices of vacancies—postage included
18. Number of lines of newspaper or magazine space contributed without charge

B. Duties' Classification

19. Total number positions classified on basis of duties
20. Number of revisions of definitions
21. Number of new definitions prepared for new positions

C. Salary Standardization

22. Total number positions compensated under standardized scale
23. Number of changes in salary rates recommended by commission for year under review
24. Number of changes adopted

D. Examinations and Appointments

25. Number of examinations held (excluding labor and promotions)
26. Total number of applicants
27. Total number of non-resident applicants
28. Number of examinations with 3 or less applicants
29. Number of examinations in which standard intelligence tests were used

30. Number of performance or trade tests used
31. Number of examinations given with aid of outside experts
32. Number of examinations given with aid of departmental officials
33. Number of examinations in which local residence restrictions were waived
34. Number of laborers given medical examinations
35. Number of other employees given medical examinations
36. Number of individual character examinations
37. Aggregate number days elapsed between date of examination and date of posting results
38. Total number of vacancies filled (excluding promotions)
39. Number of eligible lists extended over regular period
40. Number of waivers to original appointments
41. Number of *provisional* appointments to permanent positions
42. Aggregate number of days served by provisional appointees
43. Number of renewals of provisional appointees
44. Number of exempt positions at beginning of year under review
45. Number of non-competitive positions at beginning of year

E. Efficiency Ratings

46. Number of rating periods per year
47. Number of ratings recorded for typical rating period
48. Number of ratings appealed to the commission
49. Number of ratings revised by or through commission

F. Promotions

50. Number of examinations
51. Number of candidates examined
52. Number of vacancies filled by promotion after examination
53. Number of waivers of those on eligible lists

G. Retirement

54. Number of employees retired on account of inefficiency
55. Number of employees retired on account of old age

H. Office Administration

56. Number of changes in roster of employees
57. Number of personal service records in live file
58. Number of payrolls checked and certified
59. Number of sick leaves recorded
60. Number of annual leaves recorded
61. Number of letters mailed

I. Legislative Functions

62. Frequency of revision of rules and regulations
63. Number of old rules revised
64. Number of new rules adopted
65. Number of public hearings on changes
66. Number of violations of rules considered
67. Number of court hearings on rules and regulations
68. Number of favorable decisions
69. Number of unfavorable decisions

J. Judicial Functions
70. Number of formal appeals made to commission
71. Number of sessions in which appeals were heard
72. Number of cases appealed to court
73. Number of decisions upholding the commission
74. Number of decisions reversing the commission

IV. *Financial Statement*
75. Budget Appropriation

Expenditures
76. Advertising
77. Equipment (maintenance and new)
78. Postage
79. Printing
80. Salaries
81. Special examiners and assistants
82. Stationery and Supplies
83. Telephone and telegraph
84. Miscellaneous

The above selection and grouping is tentative. It is hoped that criticism and comments will be freely made so that the truly significant factors may be brought together. In considering supplementary items, however, it should be borne in mind that the aim has not been to compile an exhaustive list, but rather one including only those items that may be indicative. In fact it may be possible, after the data from various cities have become available and the methods of using them worked out, to reduce the number of factors by eliminating those that overlap as well as those that do not lend themselves to statistical treatment. The reason for this is obviously the desirability of arriving at an index figure with a minimum of basic data.

After agreement has been reached as to the functions and the units of measurement, commissions in cities of 150,000 and more population will be requested to supply the information required. It is hoped that information will be available from fifteen to twenty cities, which may be grouped in more or less uniform units. These data will then be used as a basis of indicating the relative efficiency of the civil service commission as is outlined below.

Pending the collection of the data, at least twenty competent officials and specialists in the field of civil service will be asked to estimate the relative value of the major functions, having in mind the time and attention devoted to the given function, and also the significance that it actually has in the practical administration of the representative commission. For example, it will be generally granted that efficiency

ratings are a very important factor in employment management, whereas, as a matter of customary procedure, civil service commissions devote comparatively little attention and time to ratings and, furthermore, attach comparatively little weight to them, as they are at present administered.

The initial step in the weighting process is to compare all major functions with the least important and to express them in terms of the least important. By way of illustration, if efficiency ratings are the least important function, examinations and appointments might be considered to be five or ten times more important than the least important. On this scale its weight would then be 5 or 10.

The next step is to add the individual weights of all functions. If a single integer is then added to cover the unit value of the least important, the total will indicate that all of the factors taken together are so-and-so many times the least important. This figure will be divided into one thousand, and the resulting quotient substituted as the equivalent of the least important factor. By this method the weight of each major factor will be determined.

To illustrate: If it is found that all factors taken together are thirty-nine times as important as the least important, that is, efficiency ratings, one thousand would be divided by forty (one being added to thirty-nine to represent efficiency ratings), resulting in a basic unit value of twenty-five. The weight of examinations and appointments would be, therefore, according to the above assumption either 125 or 250.

Finally, the number of points assigned to each major function are to be distributed among the subdivisions of this function according to a consensus of opinion, reached in a similar way to that just outlined.

The weights thus determined represent the relative importance assigned to the several functions by the combined judgments of qualified experts. These weights may be used without further refinement in deriving a single index for gauging the relative efficiency of civil service commissions. The nature of opinion-estimates is such, however, that the weights thus determined are arbitrary approximations of the true importance of the component functions. The committee proposes, therefore, to derive new weights which will be closer approximations of the true partial weights, when required data are available from the several commissions. The arbitrary weights and the variability of the several series of values will be used in securing a tentative, cumulative weighted efficiency score for each commission. New weights will be derived by evaluating statistically each component function in terms of the tentative efficiency scores thus set up.

After the new weights have been worked out the next step is to combine the measurements of the several functions in such a way as to indicate the relative efficiency of each commission. The committee proposes two plans to accomplish this purpose. The first is a simple score card on which the data from all commissions for each measurable function are arranged in convenient intervals. By indicating its rank-position in each of the functions, a commission will have a graphic picture of its standing in each function with reference to the other commissions in the group under comparison. This plan offers several advantages:

The commission may rate itself with respect to other commissions in the group.

A comparison of rank-positions in the several functions will readily point out to the commission those functions in which it is weak and those which are being over-emphasized.

By comparing score-card ratings for two consecutive years, the commission may readily determine the degree of progress accomplished in each function.

The second plan concerns the computation of a weighted score, which will express in one figure the relative efficiency of each commission. The value for each function will be multiplied by the given weight for that function and the cumulative total of these products for each commission will constitute a series of weighted indexes. These, in turn, may be expressed on a convenient scale.

The above is at best a tentative outline of an experimental procedure. The character of the data will necessarily greatly influence the method of treatment. The factors themselves must be at hand before relationships can be set up and standards of measurement worked out. It may well be that certain of the data called for in the schedule of questions will prove to be of little significance and that other functions should be considered. Further, it is not unlikely that the weighting process may be made much more exact. However that may be, the initial stage is to bring together such information as seems to be both available and significant and then to test out its value as a means of comparing commissions along some such lines as those suggested above.

After agreement is reached as to the significant factors it may reasonably be expected that civil service commissions will submit the data currently as a matter of standard procedure in the annual reports.

II. Selection

The discussion on the subject of selection centered about the report made by Mr. E. M. Martin of the National Institute of Public Administration, who summarized the methods followed in preparing a set of tests that were devised to predict police ability among applicants for this position. This experiment served to illustrate modern methods of choosing tests with reference to the requirements of the position, of giving and grading them by use of statistical technique, and, finally, of evaluating a selective scale in terms of a criterion of demonstrated success on the job.

It was reported to the round table that the Bureau of Personnel Administration at Washington has been working along these lines, and that improved tests are being constructed that will be made more and more generally available to civil service commissions through this agency. It appeared, therefore, that the present problem with respect to selection is rather one of application of approved methods than the discovery of new ones.

In the course of the discussion, however, two minor projects emerged, which in the judgment of the group properly fall within the scope of the program of the conference. The first is the compilation of data which will show the correlation of the results of entrance examinations with the efficiency ratings of new appointees after an initial period of service. This would constitute a practical testing of entrance examinations. It would indicate in how far they have predictive value, and would thus enable a commission to improve their examinations according to a fairly objective procedure. With the aid of modern statistical methods such correlations can be performed with a minimum of difficulty.[1] The uniform compilation of data along those lines would go far toward demonstrating both the need and the advantages of the suggested procedure.

The other project has to do with the possibility of improving scoring methods. As speed and accuracy are both factors, especially in modern tests, and as their value will vary not alone because of the nature of the test itself, but also with reference to the character of the work for which selection is being made, it is of essential importance that these factors should be properly and, if possible, statistically weighted. A

[1] The United States Civil Service Commission has made comparisons as outlined above with significant results. See "Progress in Civil Service Tests" by Filer and O'Rourke. Reprint from *Journal of Personnel Research*, Vol. I, No. 2, March, 1923.

formula has been devised by Dr. L. L. Thurstone[2] which makes possible a weighting for errors that will go far toward eliminating the personal equation in the scoring of papers.

III. Efficiency Ratings

The problem in the field of efficiency ratings has to do with those positions involving work which is not measurable in terms of standard units. It is believed that this is true of the majority of the positions in the public service. In the judgment of the round table the satisfactory solution of this problem will depend on the development of objective tests for "coöperativeness," "dependability," "leadership," and similar qualities, such as we now have for speed, accuracy and intelligence. This is obviously a task for the psychologists. According to reports from various sources, progress is already being made in the direction of measuring such moral and dynamic qualities as those mentioned.

Until tests of this type are available it is proposed that efforts be made along the following lines in order to reduce and control to the utmost the subjective element involved in rating workers in the positions indicated:

1. Procure, if possible, the estimates of two, three or four independent and competent raters, who have been coached on the subject of standards and trained in the use of some standardized rating scale. By averaging such judgments the probable error will be greatly reduced and a fairly objective estimate derived. It should be pointed out that the probable error decreases progressively as the number of raters increases.[3]

In case circumstances make it impossible to pursue this method the ratings should be checked by some such means as the following:

2. Check ratings by means of standardized vocational tests or by standard tests of specific qualities involved in the performance of the customary duties of the position as, for instance, recognized clerical tests for those engaged in clerical work.

3. Correlate ratings with ascertainable facts in so far as these have been shown to have relation to job success. They might cover school success, results of entrance examination, service and promotion history, records of earnings, and the like.

W. E. MOSHER.

[2] See "Scoring Method for Mental Tests," *Psychological Bulletin*, Volume 16, No. 7 (July, 1919).

[3] Cf. H. O. Rugg, "Is Rating Character Practicable." Reprints from *Journal of Educational Psychology*.

ROUND-TABLE III. PUBLIC FINANCE

The beginning of the first session of the round table was devoted to a consideration of the various subjects within the field of public finance in order to determine which topics or problems were likely to be the most suitable for study. After a few minutes of general discussion it was decided to endeavor to limit the attention of the group to two or three topics of fundamental importance and to see what conclusions could be arrived at concerning them.

It was early recognized that the most fundamental need at the present time in order to make research in public finance fruitful is an exact terminology. The farther the discussion proceeded, the more obvious this need became. Throughout all the sessions of the round table this need was patent, for different persons used the same terms in differing senses, and a term was used by a person at one time to mean one thing and at another to mean something else. On occasions, presumably technical terms were used in their colloquial senses while, at other times, they were used in technical senses with different meanings.

Along with the recognition of the need of an exact terminology in public finance it was recognized that governmental accounting was, in effect, a major part of the language of public finance, and that a very large share of the need for an exact terminology fell within the field of governmental accounting. About an hour's time was devoted to a consideration of the question of improving and making more scientific governmental accounting.

With reference to the need of terminology in accounting it was noted that three large and influential organizations were then giving consideration, through committees, to this question, namely, the American Institute of Accountants, the American Association of University Instructors in Accounting, and the Governmental Research Conference. Interesting as this topic was, it was felt that inasmuch as these three organizations were paying special attention to accounting terminology, the round table should not devote time to it.

The round table came to the conclusion that the main structure of the governmental accounting system should be based, so far as practicable, on the principles developed in private commercial accounting, and that one of the most promising steps that could be taken by governments would be so to organize their accounting systems. It was felt that there were no greater differences between the accounting needs of a government and the accounting needs of ordinary commercial enterprises

than there are between the accounting needs of different kinds of commercial enterprises. In other words, the essential differences between a governmental accounting system and that of a manufacturing enterprise are no greater than those between the system of a manufacturing enterprise and that of a department store. It was felt that the fundamental elements and interpretations of ordinary accounting apply to governmental accounting.

After some discussion it was agreed that governmental accounting should be built on the unitary or proprietary basis,—that is, viewing the government, whether a nation, state, or local government, as a single or consolidated unit, the emphasis being placed on the government as a proprietor, rather than on the various funds or governmental subdivisions which may have been created for the purposes of the government. It was felt that the accounting system of a government should be constructed so as to give the kind of information obtainable from a strictly proprietory system of accounts, even though additional or conflicting methods of accounting are by laws, local conditions, contractual relations, or other factors, required. It was agreed that only by the adoption of such a system, and the recognition of such accounting principles, could effective financial administration and comparable financial data be secured.

After about two hours of discussion of the essentials and needs of governmental accounting, the round table decided to take up the question of public debt, and at first to confine the discussion to municipal debt, meaning thereby debts of local governments.

At the very start the round table was confronted with varying interpretations of what is meant by the term public debt. After a brief consideration of the problem it was agreed that the term ought to include all kinds of debt, whether represented by bonds, notes, judgments, open accounts, or other forms of debt. It was also agreed that comparisons of gross debt were not enough, and that for many purposes comparisons of net debt were more valuable. Tentatively, the term net debt was defined as the gross debt less the amount of assets definitely earmarked for its payment, whether those assets are or are not in a sinking fund. It was appreciated, however, that in many cases the net debt would not serve as the best item for comparisons, for a given municipality might end a period with a deficit or a surplus, which from the standpoint of comparing the financial position of one municipality with another, or comparing the position of a municipality at one time with that at another time, would have considerable effect. It was

agreed, therefore, that deficits should be added to the net debt and surpluses deducted from it, and that comparisons of the net debts as modified by the deficits and surpluses should be made, rather than of the net debts alone. But in making this decision with reference to deficits and surpluses, many questions arose as to what constitutes a deficit or a surplus. While recognizing that a suitable definition could not be set up at the time, it was tentatively agreed that the amount of revenues of future periods used in advance of those periods should be considered as a deficit, and that revenues of past periods carried forward to a later period should be considered as a surplus.

It was felt, also, that comparisons of net debts as modified by deficits and surpluses would not give a correct picture, for an increase in debt might have been made for ordinary running expenses, with the result that the municipality would have no value remaining to offset the debt, or it might have been made for the acquisition of assets of a more or less permanent nature. Furthermore, at a given moment the proceeds of a bond issue might be on hand unexpended. It seemed necessary, therefore, to bring these several elements into the picture if a worthwhile comparison was to be made of the financial condition of different municipalities, or of a given municipality at different times.

It was realized that the subject of municipal debt was so big and had so many ramifications that only a few of the problems involved could be dealt with at all satisfactorily in the remainder of the time available for round-table sessions. It was therefore decided to take up the question "When is a given increase or a given amount of municipal debt justified?" In other words, what are the tests that can be developed to determine whether or not a given increase or a given amount of municipal debt is proper? It was quickly agreed that, except in emergencies, an increase of municipal debt for current expenses was not justified; and that, ordinarily, municipal debt should not be created for other than the acquisition of more or less permanent assets.

It was recognized as unsound to create debt for current expenses, for the reason that the taxpayers of future years would be burdened with the payment of the cost of service received by the taxpayers of earlier years. It was also recognized that it was not sufficient simply to acquire an asset equal in amount to the increase in debt, for a debt payable after the expiration of the asset acquired is equivalent to creating debt for current expenses to the extent that such debt remains unpaid, or unoffset, as by sinking-fund accumulations, after the asset has expired. Thus, a debt payable in 30 years that is created to acquire

an asset having a probable useful life of 10 years, would be equivalent at the end of the 10 years to borrowing money for current expenses for 20 years. It was also evident that the creation of a debt for the acquisition of assets, all or a part of the cost of which is collectible from property owners or others, as in the case of special assessments, is equivalent to the creation of debt for current expenses, if the receipts from the reimbursable expenditures are not applied to the payment of the debt created in respect of those expenditures but, instead, are used for current expenses.

The group further agreed that it was not enough for a debt to be paid or offset by the time the value of the asset acquired through the creation of the debt had expired, for making payment or provision for payment of a debt slower than the value expires is equivalent to borrowing money for current expenses to the extent that the payment or provision for payment is slower than, or postponed beyond, the cumulative expiration of value.

At this point it was brought out that a given municipality might be borrowing money for current expenses and at the same time applying revenue to capital outlays. It was agreed, therefore, that it was not sufficient to take notice of the nominal reasons for the incurrence of debt, but that a view must be had of all of the transactions of the municipality. This brought the group again face to face with the subject of municipal accounting.

After some discussion it was agreed that if a municipality kept its accounts along substantially the same lines as those followed by private commercial enterprises, comparisons of the net worths of the municipality from time to time, or of the net worths modified by pertinent factors, would be far more accurate and convincing than comparisons of debts. Thus, if the net worth of a given municipality were at least as large at the end of a period as at the beginning of that period, and the municipality had not received during the period any property or money through sources not involving an equivalent price, such as gifts, special assessments, and consolidations, proof would be had that the municipality had met all its expenses out of its income, that the taxpayers and citizens had been charged the full cost of the services received by them during the period, and that any debt created during the period and still owing was, in effect, created for capital outlay purposes. Should a municipality receive during a period property through sources not involving an equivalent price, the net worth at the end of the period should be compared with the sum of (a) the net worth at the beginning

of the period, and (b) the amount of such accretions during the period. In all cases the term net worth is understood to mean the excess of the municipality's assets over the municipality's liabilities, ample allowance for depreciation of assets being made, just as is common in private enterprises.

It was agreed that this constituted an absolute minimum standard, and various arguments were made in support of a stricter standard. For example, it was contended that, because of the great cost of debt and the comparative ease of financing the acquisition of assets from revenue, a higher standard should be adopted. When it came to deciding upon an appropriate higher standard the group was confronted with a very large number of possible standards, ranging all the way from this minimum one to the prohibition of the creation of debt altogether. There seemed to be a general consensus of opinion that all constantly recurring expenditures, and all other expenditures of relatively small size, should be met out of revenues and not financed through the creation of debt. It was pointed out that if a municipality says that it cannot raise an additional amount of revenue—say, one million dollars—for meeting proposed expenditures, but finances the expenditures out of loans, and continues this practice for a few years, it will reach the point where a million dollars of revenue a year must be collected simply to discharge the principal and pay the interest—or, perhaps, simply to pay the interest—on the several years' accumulation of a million dollars of debt a year; and that had the municipality taxed itself a little heavier from the beginning, it would have this million dollars a year for the acquisition of assets, rather than be obliged to use it for interest and payment of the debt which was created because it was thought that a million dollars of additional revenue a year could not be raised.

The question of the justification of municipal debt raised more than questions of mere finance. Throughout the discussion it was evident that the incurrence of public debt had great social significance, and that, although it had to be viewed very largely from the standpoint of finance, the debt policy of a municipality or other governmental unit should be developed with special reference to sound social policy. In addition to agreeing that a debt should be paid within the life of the asset acquired through its creation, assuming that debts and given assets can be earmarked, the group discussed the question of how much sooner a municipal debt should be paid, but came to no conclusion with regard to it.

The group also discussed the question of how municipal bonds should be paid, whether through a sinking fund or direct, and also whether all at once or serially. On the whole, the view seemed to be that municipal bonds should be paid serially throughout the term of the issue, and preferably without setting up any sinking fund for the purpose.

The group discussed the question upon whom the burden of a debt should be placed, whether upon the taxpayers as a whole, or upon selected beneficiaries of the creation of the debt, or partly upon the taxpayers and partly upon those especially benefited by the expenditure financed through the debt. There seemed to be a general consensus of opinion that to the extent that particular citizens or groups of citizens were found to be benefited by the creation of a debt, to that extent the burden should be placed upon them, and that only where the beneficiaries could not easily be selected or where the benefit was slight should the burden be placed upon the taxpayers as a whole. In this connection citation was made of the creation of debt for expenditures for special assessment work and for highway improvements, all or a part of the burdens of which were being met out of special assessments, taxes on the sales of gasoline, and other charges made against those assumed to receive particular benefits from the expenditures.

It was agreed that in order to set up a suitable standard for the creation and payment of municipal debt we must determine what constitutes a proper system of municipal finance, for questions as to what amount of taxes and other revenues ought to be secured, the use to which these ought to be put, the limitations that ought to be placed upon expenditures, the relation that ought to exist between the time expenditures founded upon taxes are made and the time the taxes are received, and many other details of municipal finance, need to be taken into account.

Many questions were raised regarding the expenditures in respect of which debt is created. Is the proposed expenditure necessary and, if so, is it necessary at the time? It was felt that the necessity for the proposed expenditures is determined by a large number of factors working more or less together at the same time. Among these factors might be mentioned public psychology, cost of the expenditure, ease of securing money by borrowing, the probable tax burden, including taxes for interest and for payment of the debt, and beliefs as to who will bear the burden of the debt. Other related questions were: Will the expenditure be made economically and wisely? Does equity warrant

borrowing for the expenditure, or is it one that should be met out of revenues?

Considerable discussion took place over the proposition that a city should resort to loans if it can borrow money at less cost than the taxpayers, for by so doing it would be saving money for them. It was contended by some that a city ought to function as a fiscal machine, and that if money is worth more to a taxpayer than to the city the city should borrow the money and postpone payment by the taxpayer. The majority of the group was opposed to this view as a general proposition, but recognized that under some circumstances it should, perhaps, be regarded as a factor. Put concretely, the discussion resolved around the question: Does the fact that the city can borrow money at less cost than the taxpayers justify borrowing, and, if so, should the city go so far as to borrow for current expenses as well as for capital outlays, and let the taxes remain in the pockets of the citizens, if they can earn more on the unpaid taxes than the rate of interest which the city has to pay?

A great many other questions were discussed, but time did not permit of sufficient consideration to arrive at a group opinion regarding them. Of these questions, the following were, perhaps, the more important: Should borrowing be resorted to in periods of unemployment in order to provide work on public construction for the unemployed? Should borrowing for a project take place before all plans for that project have been completed? Should the entire cost of a project be borrowed before commencing work, or before making contracts therefor? Should a municipality issue general bonds for special assessment work, or should it issue special assessment bonds for such work? Should a replacement or renewal fund be created to replace, or to offset the depreciation of, expiring assets, in addition to paying, or creating a fund for the payment of, the debt created for acquiring those assets? Should bonds be issued at, above, or below the market rate of interest? Should a municipality reserve the right to redeem bonds in advance of their maturity? Is there a saturation point in taxation, and, if so, how can this point be determined?

FREDERICK P. GRUENBERG.

ROUND TABLE IV. LEGISLATION

It was the unanimous opinion of the round table on state legislatures that we had an interesting time, and we parted friends. In view of the fact that two hard sessions were held each day and the chairman con-

sidered that his only duty was to stir up friction, the latter was no small accomplishment.

Our first session was devoted to a mutual unburdening of pet dogmas relating to the nature and functions of legislatures. In this manner we cleared the air and established certain working hypotheses. It was obvious from the start that we should have to confine ourselves to a narrow section of the field, denying ourselves the pleasure of many diverting excursions down interesting avenues. Our purpose being, if possible, to discover some objective, measurable facts by which to test legislative processes, fixed opinions and *a priori* reasoning were taboo. We were experimenting to see if the methods of the established sciences are applicable to the study of legislative bodies. To some the process which we outlined undoubtedly seems as trifling as counting the wrinkles on an alligator's back, but our working theory was that the factors which make legislation can be measured, perhaps statistically, and most of us came away encouraged.

Three general problems emerged from the week's discussion. They may not be the most fundamental, but they seemed to lend themselves to experimentation most readily. We have no illusions as to the difficulties of such experimentation. Each element will require long and often irksome effort, and our proposals, which seem simple and perhaps immature, really constitute an ambitious program.

I. Our first problem was: To what extent does the party system exist in the state legislatures and how can its influence be measured? As helps in answering this question the following proposals were developed:

1. A study over a considerable period of time of the composition of legislative bodies to ascertain to what extent they represent political parties, or whether the main basis of representation is economic or group interests. Some hasty compilations suggest that we have a much larger degree of group representation, as distinct from party representation, than was the case a generation ago.

2. The ascertainment of the relation of party platforms to the legislative product. State and local platforms must be analyzed and compared with bills introduced and laws enacted. The effort is, of course, to correlate platform pledges with the individual and collective action of the party members. The prominence of the platform during the campaign must be observed. Newspapers, candidates' speeches before and after election, roll-calls and other sources showing the members' attitudes toward platform planks will throw light upon the obligation attached to the platform. Results here disclosed may have a definite

bearing upon the question of party coherence. A similar study should be made to discover the degree of correlation between the governor's pre-election commitments, the platform of his party, his executive messages and the measures considered by the legislature.

3. Measure how closely party lines are drawn by individual members. Find out the proportion of roll-calls (with importance rated) which are strictly or pronouncedly partisan. There is evidence that national party lines play a relatively minor part in state legislatures after the bodies have been organized, although here, as in many other connections, the variations between states will doubtless be marked. Conversely, such a study could measure the influence of group alignments as against party.

4. Relate party solidarity to legislative procedure. To what extent does control by a single boss or a small group within the dominant party prevail? If it is present, by what means does it exert itself? To what extent is control by a single majority party necessary or helpful to steer through important legislation such as appropriation bills? These questions involve among other factors steering committees, control over debate and gavel rule. Statistical studies alone will not give adequate answers. First-hand investigation, coupled with close familiarity with the particular legislature concerned, is necessary. Information gathered from experienced observers will supplement other sources.

5. What is the influence of a candidate's legislative record upon his chance of reëlection? His standing both with his constituency and with his party organization is involved. Is his record discussed in the campaign and, if so, what phases are important? Leading sources on this point would include legislative journals, newspapers, reported speeches of candidates and reports of voters' leagues.

6. Can we measure the influence of his constituency upon the legislator after his election? This implies a study of organized and unorganized propaganda. What part does the party machinery in the district from which the member comes have in the mêlée of forces playing about him? Accurate information on this point will be extremely difficult to assemble. A telephone call, a telegram, a personal word, may be a more potent influence than many public meetings or pages of newspaper propaganda.

II. Our second problem was: By what methods can we measure the validity of the arguments for and against the bicameral system? The subject was opened by Dr. C. H. Maxson, who presented a comparative study of unicameral and bicameral legislatures in the British

dominions. The attention of the group was then directed to the possibility of gathering objective evidence to see how far his conclusions, arrived at by comparative observation, would be substantiated by an analytical study of American legislatures. We concluded that the bicameral system should be analyzed to determine:

1. The character of the two bodies, to find out how they fulfill the representative function. Brief studies of this nature have been made, but more intensive and extensive investigation is needed. We must consider the qualifications of electors of the members of the two houses, the bases of apportionment and the effect of different methods of apportionment as between the two houses, the legislative experience of members, to see if there is any guaranty of greater legislative experience in one house than in the other and whether one house is generally more conservative than the other, as indicated by the fate of progressive legislation in both houses.

2. The extent to which fixed responsibility is placed upon each house for its actions. Does the bicameral system enable the houses to evade responsibility? Light will be thrown upon this problem (a) by a study of the bills passed in one house and vitally amended in the other, (b) by a study of bills passed in one house and defeated in the other, (c) by a study of the bills which passed both houses without alteration. Here, as elsewhere, a mere statistical compilation will not suffice; measures must be classified and their importance weighted; political considerations and the personal relationships of members must be recognized; allowance must be made as to whether both houses are truly of the same party, whether the majority in each has the same attitude on public affairs regardless of nominal political allegiance, which may be merely formal. Here, as in other matters, material will be found revealing the habitual attitude of the upper and lower houses, which may support or discredit the bicameral principle. As elsewhere, the research worker must know his legislature. He will find it difficult to isolate his data in the manner of the physical sciences.

3. How far joint committees and other joint action has developed. This may show that the bicameral principle is breaking down. A careful study of the possibilities of the joint committee may indicate that improvement lies along the line of developing this apparently useful device.

4. The extent to which leadership or control outside the legislature determines ultimate action in defiance of the bicameral principle. Here we are thrown back upon our first big problem of the functioning of the

party system. When we know more as to how parties really work we shall be better able to judge the utility of upper chambers.

III. Our third problem lacked the sweep of the other two. It concerned the internal structure of the bodies and rested on the assumption that a closer study of the physiology of legislative procedure would be productive. The problem was: What are the merits and defects of the committee system and by what methods can they be measured? The necessity for some system of committees, as legislatures are at present constituted, was conceded by unanimous consent.

The following studies were suggested:

1. The relation of committee action to final action by the house, to determine to what degree the house acts as a rubber stamp upon committee recommendations. Significant things to know are (a) the proportion of bills favorably reported by committees without material modification and with material modification, (b) the number of bills favorably reported which pass, (c) the proportion which die in committee, and (d) the extent to which the bodies look to their committees for the preparation and introduction of legislative proposals. Such a study must include a careful analysis of the nature of the various bills which fall into the above groups, and must differentiate between divided and unanimous committee reports.

2. Size of committees and the relation of size to effectiveness. This will be difficult to measure, but some conclusions may be gained from a comparative study of the output of small and large committees. The extent to which large committees make use of sub-committees will be suggestive.

3. Fitness of committee members can be objectively studied. To what extent are the following tests applied in the selection of committee members and how far are they successful: (a) seniority, including legislative experience in the other house; (b) experience outside the legislature; (c) occupation; (d) education; (e) geographical representation; (f) political position; (g) past committee experience; (h) independent study of subjects coming before the committee, and distinction gained therefrom?

4. Methods of selecting committees. The results obtained in the preceding paragraph should be related to the different methods of selecting committees. Do the various methods give about the same results?

5. Number of committees upon which members serve can be related to the number of measures referred and the scope of their subject mat-

ter, to see whether the burden placed upon the legislator is too great. Perfunctory committees should, of course, be eliminated. This phase should be studied in connection with the use of committee hearings, joint committees and conference committees, and all can perhaps be related to the final action by the house upon the reports of the committees, as outlined in a preceding paragraph. The actual time saved by joint committees can be determined; also, whether separate hearings by the committees of both houses result in a more thorough scrutiny. The evolution and present use of conference committees being determined, the results may point toward the decay of the bicameral system.

IV. We were anxious to develop some tests for determining the quantity and character of legislative leadership, but limitation of time compelled us to postpone the discussion until next year. A few tests in this field were suggested which may or may not be practicable. Some of them were as follows: (a) Does the session show a consistent policy; (b) to what extent does the legislature follow an automatic calendar, or is most business done under special orders; (c) do certain committees have preference, and why; (d) to what extent are steering committees used, what are their powers, and do the people recognize their leadership; (e) has the floor leader appeared as a dominant personality; (f) in what respects does leadership and discipline differ between the upper and lower houses?

At the next conference it is hoped some progress will be made on the above problems, the question of executive leadership also being considered.

A final word by way of extenuation: We granted at the outset that our findings may seem immature and our process futile. The members of the round table concede their youth, but they are not willing to concede the futility of their method until it is tried. Our selection of subject matter ignored important questions, but those we selected are at least significant and seem to be capable of objective measurement. The great need today is the accumulation of data with which to work. The studies we propose will have little significance unless they are carried on intensively in all parts of the country. The round table has succeeded in starting one or two studies this year, but many more on a much larger scale are needed. Funds are needed to carry on intensive research studies. We can outline the methods in an academic manner, but unless the data to apply our methods be secured, methods are of no service.

The round table was indebted to a few of its members for special services. Helen M. Rocca, from the national headquarters of the League of Women Voters, generously acted as secretary; Dr. F. H. Guild of the University of Indiana prepared a memorandum, which was the basis of much of our work, and presented the final report of the group to the conference; Dr. C. H. Maxson of the University of Pennsylvania, Professor John E. Briggs of the University of Iowa, and Mr. E. E. Witte of the Wisconsin legislative reference library contributed valuable material.

The writer would like to communicate with any who are interested in trying out some of the proposals made above. He can be reached at 261 Broadway, New York City.

H. W. DODDS.

ROUND TABLE V. POLITICAL STATISTICS

The subject of political statistics covers a very generous field. For this reason, the round table on Political Statistics concluded to limit its discussion to municipal statistics, as found in the group of cities ranging from 100,000 to 500,000 population. The round table had before it a rather complete statement of the activities conducted by such typical cities. Taking each activity in turn, an effort was made to indicate the minimum of statistical data necessary to give officials and citizens a reasonable idea of the degree of effectiveness with which such activity was conducted. It is expected that the complete statement of these activities with their statistical data, when properly weighed as to importance, will furnish a reasonable test as to the quality of government by any community.

The determination of such tests is less simple than it may first appear. It is desirable to devise a single test applicable to cities of every size and location. Obviously, however, larger cities undertake activities not necessary in smaller ones. Criteria available in Detroit could not necessarily be applied in Dayton, and the absence of such criteria should not be taken as a reflection upon Dayton's government. To obviate this difficulty, the suggestion was made that tests be arranged in sufficient detail to judge even the largest communities, with provision for eliminating certain specified questions when applied to smaller places. Such a plan eventually may be evolved. In the meantime, it seems practicable to devise standards suitable for a large group of important cities, such standards to be later modified for communities of less size.

Even when limited to a definite group of cities engaging in substantially the same activities, the determination of tests is not an easy

one. After the many years of city operation, it might be assumed that certain definite results are available by which to judge the effectiveness of municipal organization and operation. Unhappily, public opinion has seldom demanded concrete evidence of results. Some city activities lend themselves easily to measurement of results: for example, the effectiveness of health work can be measured by the general death rate, death rate of children under one year, and the morbidity and mortality rates for certain communicable diseases, as well as by other rates. Other departments should have equally measurable results but do not provide them. For example, in street cleaning and refuse removal, the public and administrative officers should have easily available the yardage cleaned as compared to the total area of paved streets, the frequency of cleaning, the amount of wastes removed, the cost per thousand square yards and per ton, etc. However, only the most progressive cities have undertaken to secure these data and frequently such information is useless for comparative purposes. Still other departments do not have measurable results. For example, the legislative and executive bodies must be judged by their organization, on the assumption that effective organization will produce effective operation.

Further, in measuring a city as a whole, what relative importance may be given to the various activities? On a scale of 100, what per cent should be allowed for an effective health department as compared with an effective recreation department? It is obvious that relative values must be determined by the average of opinions.

Objections will be raised to the proposals outlined. A critic may immediately point out that factors other than morbidity and mortality rates enter into determining the effectiveness of a health department. Some of these are—adequate or inadequate hospitals, age of population, good or bad climate, frequency of epidemics, and the deviser of any rating scale must make reasonable allowance for such disturbing factors. Such consideration, however, must not go to absurd lengths, nor complicate the tests so that they can not be made by laymen. The tests, when concluded, must be reasonable, common-sense measurements that will do some kind of rough justice. As we progress, these tests can be further refined.

It is obvious that some such tests are necessary. Numerous attempts have been made to devise them as evidenced by the community score card, prepared by the Federal Council of Citizenship Training; Town studies, prepared by Professor Harold D. Meyer of the University of South Carolina; Lifting the country community by its own boot-straps,

prepared by the extension division of West Virginia University; A statistical study of American cities, prepared by Reed College; and by the efforts of the National League of Women Voters.

A detailed statement of the activities enumerated and of the data selected as criteria by the round table is being prepared in the form of a rating scale. This rating scale will eventually be submitted to persons familiar with the different branches of government, in order that the weights may be readjusted in accordance with best available opinion. Arrangements have been made with the *National Municipal Review* for the publication of this rating scale upon its completion.

LENT D. UPSON.

ROUND TABLE VI. PUBLIC LAW

The agreed purpose of the conference was to discover what methods are available for putting inquiries in the various fields of political science on a factual, and so far as possible, quantitative, rather than on a judgment basis. In some fields, that of municipal finance, for example, the science of statistics existed ready at hand as a scientific method of obtaining and comparing results, provided a uniform nomenclature could be established. To workers in other fields, that of civil service reform, for instance, the rapidly developing science of applied psychology offered the intelligence test as a promising method of research. To the problems of public law, however, neither of these methods is pertinent. None the less, it was the belief of the round table on public law that investigations in this field might be transferred, by an adaptation of the historical method, from a purely subjective to a relatively objective basis; and to test this opinion an analysis was attempted of one phase of a problem which lies along the border between public law and comparative government, and which, moreover, is of considerable contemporary interest.

As finally worded this problem was defined as follows: *The effect of the power of the Supreme Court of the United States in disallowing legislative acts, state and national, as being in conflict with the Constitution.* This problem was recognized to be only part and parcel of the broader problem of the practical workings of the institution of judicial review on legislative acts throughout the United States, but the limitation was accepted as desirable, because of lack of time, and also in the expectation that the results arrived at with reference to the most conspicuous phase of the wider-spread problem would have a higher illustrative value.

I. *The Point of View:* Scientific inquiry in the realm of the social sciences will seek in the first instance to determine the *effects* of institu-

tions or processes rather than the *desirability* of such effects. The effects of social and political institutions and processes are, however, so complex and ramified, so inextricably interwoven, that exhaustive analysis of the effects of a particular institution or process is quite impracticable. It results that inquiry in the social sciences must be confined to the influence of the institution or process in question upon certain objectives determined *a priori*. Furthermore, it should be frankly admitted that, in contrast with inquiries undertaken in the physical sciences, every inquiry in the social sciences has ultimately in view the determination of the social value of the institution or process investigated. What is demanded is that the criteria invoked for this purpose should be clearly stated, and it should be made sure that they are widely accepted; otherwise, the inquiry becomes the personal adventure of its author. But if the caution just stated be observed, and if the question of value be deferred as long as possible, the subjective element in the results obtained may be minimized, that is to say. the results may lay claim to a scientific character.

II. *A Classification of the Most Available Data:*

1. Constitutional decisions of the United States Supreme Court; decisions by the highest state courts covering the same general constitutional issues; statutes, both national and state; the state constitutions.

2. Biographical materials relating to the personnel of the United States Supreme Court.

3. Direct testimony as to the popular attitude toward the court; political platforms; resolutions of official, public and quasi-public bodies, newspaper comment.[1]

4. The criticisms of publicists, both American and foreign.

5. The indirect testimony afforded by foreign constitutions and governmental practices, and by the state constitutions.[2]

[1] Of unique value in this part of the inquiry, for the early history of the court, is Charles Warren's *The Supreme Court in United States History*, 3 vols., Little, Brown & Co., 1922. The work brings together from a wide range of sources the comment and criticism that were visited upon the court's principal decisions in the field of constitutional law between the period of its founding and the close of Waite's chief-justiceship. The work needs to be supplemented by an additional volume performing the same service for recent years, during which organized labor has become increasingly suspicious of the court.

[2] It would appear that down to the framing of the Ohio Constitution of 1912, which requires a vote of six of the seven justices of the state supreme court in order to retire a statute on the ground of unconstitutionality, the verdict of the state constitutions was consistently in favor of judicial review, since none of them disapprove or limit the practice and almost all of them incorporate provisions which, like the "due process of law" clause, because of their vagueness, furnish basis for the great majority of the cases.

III. *Methods to be followed in the Utilization of the above Material, Especially Judicial Decisions:*

1. There must be analysis and comparison of the results reached at different periods in the history of the Supreme Court; and also of these results with those reached in the state jurisdictions. These should be classified in the first instance with reference to the constitutional problems involved. Then an effort should be made to test the results reached in the different fields of constitutional law by such of the criteria suggested above as seem relevant, or other relevant criteria. The endeavor will be promoted if the following questions are kept in mind:

a. Whether the recognized canons of constitutional interpretation; for example, the principle that a legislative act is to be declared void only in "a clear case," have the same operation in all fields of constitutional law;

b. Whether the tests of constitutionality are more definite, and so leave less to judicial bias in some fields than in others;

c. Whether the results reached by the court have proved more durable and have been more consistently developed in some fields than in others;

d. Whether decisions rendered by a closely divided court have proved less durable than others;

e. What reasons do the decisions reveal for the retention of judicial review:

f. What traits appear to be essential to the institution, what traits more or less accidental?

Other questions may occur to the investigator in this connection.

2. Those doctrines of constitutional law the initial assertion of which by the court betokened the extension of its reviewing power over new categories of legislation should be especially noted; *e.g.*, the doctrine that the power of Congress to regulate interstate and foreign commerce is exclusive, the doctrine that Article I, sec. 10, protects public grants, the modern doctrine of "due process of law."

3. Fluctuations in the application of conventional canons of constitutional interpretation should be noted, and also the effect of such fluctuations in vesting the court with an enlarged discretion in approaching constitutional questions; *e.g.*, the uncertainty attaching to the term "political questions," or the dilemma presented by the contradictory ideas of "reserved rights of the states" and "the supremacy of the national government in its field."

4. Finally, it should be inquired whether views have altered since the first establishment of judicial review as to the finality of the court's

reading of the Constitution. The question is, whether the court possesses the only authority vested in any organ of government to interpret the Constitution, or whether the interpretative power also inheres in the legislative power. In other words, do the court's decisions have a higher authority today than formerly?

5. The operation of judicial review should be compared with that of institutions performing an analogous function of control in other systems, particularly in other federal systems.[3]

IV. *The Effects of Judicial Review as above defined:* The inquiry has several ramifications of which the following are the more obvious:

1. Its effects on the Constitution:

a. What elements has it contributed to the flexibility of the Constitution; what elements to its rigidity?

b. In what ways has it aided popular comprehension of the Constitution; what difficulties has it obtruded thereto; what elements of stability and popular esteem of the Constitution has it contributed; and the opposite?

c. What sanctions has it added to the security of private rights, what defenses has it set up to special exemptions and privileges?

2. Its effects on the structure of government in the United States:

a. What support has it lent to the processes of nationalization; what assistance to local autonomy?

b. Has it minimized friction between the national government and the states; has it minimized friction among the states in their relations with each other?

c. What support has it lent to the principle of the separation of powers; in what ways has it weakened that principle?

3. Its effect on the quality of statute law and statute lawmakers:

a. How has it affected the popular attitude toward statute law; in what ways weakened it, in what ways strengthened it?

b. How has it affected the attractiveness of a seat in the legislature; and has it enhanced or diminished the sense of legislative responsibility?

4. Its effects on the court itself and the judicial process:

a. Has it contributed to the court's prestige as a law-enforcing body; or the contrary?

[3] In the case of the Dominion of Canada and of the Commonwealth of Australia we have federal systems in which judicial review is employed, though less frequently than in the United States. The comparative study of the institution in these commonwealths may, therefore, be extended in some instances to particular doctrines of constitutional law.

b. Has it contributed an element in the law's delays and uncertainties?

c. Has it affected the character of judicial appointments; or menaced the independence of the judiciary?[4]

5. Its economic and social effects:

a. What aids has it lent to the development of business on a national scale; to business concentration?

b. Has it retarded economic and social reforms? Has it stabilized them?

c. Has it exacerbated the class-struggle; has it affected popular satisfaction with government in general?[5]

V. *Supplementary.* It will be pertinent to the main purpose of the inquiry to attempt, along lines already suggested, an evaluation of existing or proposed checks upon the constitutional rôle of the Supreme Court:

1. It has been proposed that the power of the Supreme Court to review acts of Congress be abolished, while it is retained as to the states. Another proposal is that the power be retained as a safeguard of private rights, but be withdrawn as to the so-called reserved rights of the states.

a. What support does either of these proposals receive from the results of the above inquiry?

b. What practical difficulties might be anticipated from an attempt to divide the field of judicial review?

c. Does the doctrine of "political questions" lend any support to these proposals?

2. Certain changes in the mechanism—the *modus operandi*—of judicial review have been suggested, some of which look to expediting the process, and others to diminishing its effectiveness through requiring more than a majority vote of the court for invalidating a legislative enactment.

a. Would the prompt removal to the Supreme Court by writ of *certiorari* of all questions of constitutionality raised under the United

[4] There is evidence to show that the possession of the power of judicial review has had a distinct effect on the tenure of judges in the states. Thus far, however, the comparative difficulty of amending the Constitution of the United States has fended off such an outcome in the national government.

[5] Each branch of this inquiry should be prosecuted with the fact in mind that judicial review is not something static, but has been from the first an expanding institution. Thus, the effect of judicial review upon itself should be considered.

States Constitution be calculated to meet some of the objections now raised to the institution? Would it be apt to raise other objections? What developments in the field of constitutional law within recent years have tended to hasten a final determination of constitutional questions?

b. What objections to the power of the court would be removed by requiring all decisions adverse to a legislative enactment to be by more than a majority vote of the court? What other effects might be anticipated from such a remodelling of the institution? What recognition has the Supreme Court itself accorded the notion that its rôle in relation to the Constitution is of extraordinary significance and demands special precautions in its exercise?

Ancillary to these queries are one or two others of only indirect importance critically. One is whether the suggested requirement could be constitutionally established by act of Congress, or whether a constitutional amendment is needed. Another is, whether existing constitutional theory does not afford the means for realizing the results to be anticipated from the proposed change. Thus, if the view be taken that the power of the court is incidental merely to its power to decide cases, the way remains open constitutionally for Congress, by repassing measures which the court has pronounced void, to exact a rehearing of the question.

c. Another suggested change in the mechanism of judicial review has to do with the court's ability to take cognizance of the facts alleged in support of legislation, especially in that broad field in which the question of constitutionality of statutes pivots on the question of their "reasonableness." Might not some agency be created for enlightening the court as to such matters, upon whose results the court could depend?[6]

3. An effort should be made to determine the effectiveness in the past of expert criticism on the product of the court; also, of social reactions to its decisions, in securing their modification; and possible methods of enhancing both the value and effectiveness of criticism should be considered. Especially should there be inquiry into the possibility of bringing the criticisms of political scientists and economists sharply to the attention of the court.

[6] The court's own views as to its ability to take "judicial cognizance" of facts in constitutional cases exhibit some diversity, an illustration being afforded by a comparison of its decision in the recent Minimum Wage cases with that in Board of Trade v. Olsen, involving the Grain Futures Act.

4. Lastly, possible changes in the methods of choice of justices of the Supreme Court should be considered with its constitutional jurisdiction especially in mind. If the decisions of the court in the constitutional field do actually produce distinct repercussions in industrial, commercial and social relations, should not this fact be taken account of by the President when making nominations to the bench? How, then, may the existing methods of presidential selection be supplemented or altered to bring this about?

The above elaboration of the original report of the round table contains few if any points which were not elicited by the group discussion. For this final form of the report, however, the chairman of the group is alone responsible.

E. S. CORWIN.

ROUND TABLE VII. NOMINATING METHODS

It was agreed by the members of the round table that the ultimate question to be answered in any investigation of nominating methods is: What is the best method of nominating candidates to office? However, it is obvious that what is best has to be determined in any case by testing different methods with reference to the particular ends to be secured. Each person will judge a particular nominating system according to whether it favors some aim he regards as desirable. Just as there is no one type of bridge suitable for all situations so, doubtless, there is no one method of nominating which will fit all cases or serve all purposes. It appeared, then, that the round table should address itself to the problem of gathering and organizing information necessary to enable those who are concerned with nominating methods to make intelligent decisions. The task, while perhaps more complex, is not essentially different from that of the scientists who have gathered and organized the data used by architects and engineers in the planning and constructing of bridges.

Some of this information is already available in such admirable studies as Professor Merriam's *Primary Elections*, Professor Horack's *Primary Elections in Iowa*, Professor Hormell's *Direct Primary in Maine*, and Dr. Schumacher's *Direct Primary in Wisconsin*. Various papers deal with aspects of nominating methods in different localities. They are at best fragmentary and usually neglect important factors. What is now needed, not alone in the interests of science but as a basis for sound public policy, is a thoroughgoing systematic study of the whole

subject. The round table, therefore, presents the following tentative report:

1. There are a number of nominating methods, each of which should be carefully investigated.

2. It should be recognized that it is possible that the same method is not applicable to all situations. It may be that different methods should be used for electing different kinds of officers, *e.g.*, legislative, administrative, judicial, or for electing officers in jurisdictions of different sizes or of different functions, *e.g.*, states, counties, cities of 500,000, villages of 2,000, etc.

3. However, no matter what the method or the purpose, the tests to be applied should certainly include (not to exclude other possible tests) the following:

a. Type of candidate produced, as indicated by age, education, occupation, previous political experience, and so on.

b. Cost of nomination to the state, to candidates, to party organizations, to private individuals and organizations.

c. Effect on the party system, including effect on such matters as party leadership and program, party organization, minority parties, party methods, and party responsibility (with the understanding that the term requires clarification).

d. Effect on public interest, as indicated by the amount of participation, amount and character of discussion, kind of appeals made, and so on.

e. Extent to which corruption is fostered, as indicated by the evidence as to buying and selling of votes, collusion, undue influence, etc.

f. Effect on continuity in office, that is, how frequently candidates are renominated and reëlected, involving consideration of such questions as the opportunity for building up "machines," for compromise candidates.

g. Effect on majority control, as indicated by the extent to which nominations are controlled by minorities.

h. Extent to which press dominance is furthered, as indicated by the degree of correlation between successful candidacies and press support.

i. Effect on campaign methods, involving the problems of press domination, corruption, and public interest.

4. Most of these tests are already applied but in a very unscientific fashion, usually by guess-work. Methods of using reliable data in the application of the tests constitute the real problem of the political scientist.

5. The data to be used are generally written and printed material of varying degrees of reliability, which may be classed as official, semi-official (party), and unofficial, and consist of the following: (*a*) *Official*—constitutions; statutes; journals of legislative assemblies and constitutional conventions; reports of legislative investigations; congressional directories and state legislative manuals or "blue books;" records of contested legislative election cases; governmental reports, especially of election officers, including instructions to election officers and the like; fiscal records of public officers; judicial decisions and opinions of attorneys-general and other legal advisors; state publicity pamphlets; statements required by law to be made by candidates and election committees. (*b*) *Semi-official*—party regulations and rules; journals of party conventions; minutes and other records of party committees, including especially fiscal records. (*c*) *Unofficial*—Newspapers and periodicals; memoirs; correspondence and diaries; biographical information; books and articles on government, history, biography, especially formal studies of nominating procedure.

6. The material above listed may be found in public offices, in public and other libraries, especially municipal and legislative reference libraries, university libraries, and in the offices of various associations, including party headquarters. Valuable material not easily classified is to be found in the files of such associations as the League of Women Voters, the Farm Bureau, the New York Bureau of Municipal Research, the city clubs and voters' leagues of various cities. The files in newspaper offices and in the headquarters of party officers and committees, though not often available to the investigator, ought not to be overlooked. Then there are special collections, such as the Stephen White papers in California, the Grosvenor papers in New York, of great potential value in working up certain phases of the subject as related particularly to the convention system.

7. Some of the information secured from these sources, assuming it to be reliable, is fact; some is opinion. The facts are of two kinds,—those capable of treatment by statistical methods and those not lending themselves to such treatment; they are, as the engineer would say, reducible and irreducible. The reducible data can be used with greater confidence because the results may be stated numerically with accuracy. Even the irreducible data in this field, consisting usually of descriptions, may be treated statistically by discovering correlations, etc.; at worst, it is capable of classification and comparison. The opinion is subject to scientific treatment only in so far as "weight of opinion" may be

regarded as scientific, or where a large number of estimates may be compared and arranged. Opinions taken from a variety of sources may constitute the basis upon which to establish standards for measuring the worth of political institutions.

8. As to the reliability of the data in this field it may be said that in almost every instance the investigator has to satisfy himself. Most public records, such as judicial decisions and fiscal accounts, are doubtless fairly reliable. Nevertheless, methods of accounting might be devised which would yield data of greater significance. In California, for example, the costs of conducting primary elections cannot be discovered; they are covered in the total election costs. Many public reports, however, are quite unreliable. The reports of legislative investigating committees and of particular officers to the legislative or other bodies are often mere undigested masses of assertion and opinion, distorted by partisan or class bias. It is to be hoped that the round table on political statistics may develop some methods for producing better public records and reports.

9. In addition to the data available, new information is desired. First-hand accounts by trained observers of the actual experiences in various parts of the world are needed to complete our knowledge of the workings of various nominating systems. Moreover, the "reducible" data is sadly incomplete. Some states do not publish the number of registered voters, some do not even attempt to find out how many there are. Some publish no election figures at all; information must be taken directly from the returns. Government records might be made more complete; failing this, independent investigators in the various states should make efforts to gather the information. Data as to costs of nomination to candidates are wholly lacking in most parts of the world, and even in the places where candidates are required to keep accounts and make them public, the records are entirely unsatisfactory. The questionnaire or survey might possibly be used with profit to elicit more information. These are but two examples in this field. Data for making adequate comparisons of the costs of nominating by conventions and by other methods are entirely lacking. Unless the information can be secured from persons who have expert knowledge of the convention system, it will probably never be available.

10. The above brief résumé of the present situation with regard to knowledge of nominating methods suggests the following program of investigation:

a. Studies should be made of nominating methods in other countries, where the elective process has been in use for some time, to find out about legal provisions, administrative regulations, party practices, and, in general, the customs and habits of voters and candidates. The states of Europe and South America, the British colonies, and particularly the Germanic, Latin and Scandinavian states should have the chief attention, since they have had the longest experience. These studies should apply as far as possible to the tests proposed under section 3 of this report and should be made by American students directly, in order to supplement and check the work already done by foreign observers.

b. Studies should be made of the state nominating systems in the United States. Perhaps the first undertaking should be to revise Merriam's book and bring it down to date. This and the other studies, however, are really only preliminary, for while Hormell and Schumacher attempted to apply the tests suggested above, not all the tests were used, and in several instances either information was not available or the only data used was opinion. Not all the states need to be studied at once; perhaps ten or twelve exhibiting the longest and most varied experience could be selected for immediate attention, the availability of the data constituting an important factor.

c. It appears that a necessary preliminary to any of these studies is the development of the methods of applying the tests named in section 3, and other tests which may be thought of. This is the task to which the round-table group is to devote itself during the present year in anticipation of a conference in 1924. The tests have been assigned, one to each member of the round table, who is to study the subject in collaboration with the leader, and report on such matters as (1) the information necessary, (2) the methods of correcting data, (4) methods of estimating, where actual records are lacking, (4) the factors of error for which allowance must be made, (5) the use of the questionnaire and the preparation of forms, (6) the tabulation and charting of information, (7) the statistical devices which may be used to bring out the significance of the information, and so on. With the technique carefully worked out, rapid advances should be possible in actual investigation.

11. The round table on nominating methods recommends that at the next or some future conference on the Science of Politics a round table on political parties, particularly emphasizing "party responsibility," be provided.

VICTOR J. WEST.

ROUND TABLE VIII. INTERNATIONAL ORGANIZATION

The members of the round table began their discussions by an examination of the objects of the National Conference on the Science of Politics, in general, and of Round Table No. 8, in particular. It was agreed that four principal objects were to be sought, namely: (1) A description of the type of material desirable for use in the study of problems of international organization; (2) a description of the type of field observations to be made in the furtherance of such a study; (3) an attempt to discover by experimentation during the sessions of the conference the extent to which our problems are susceptible of something like exact measurement and statistical treatment; and (4) an analysis and tabulation of the more important problems in the field, which demand investigation at the present time.

I. The minutes show that members of the group felt that the following varieties of printed or manuscript materials would be useful in the study of international organization:

(1) Treaties and other international agreements.
(2) Arbitral decisions, including awards of claims commissions.
(3) Diplomatic documents (correspondence, reports, instructions).
(4) Records of international conferences.
(5) Records of international administrative bodies.
(6) Memoirs of persons engaged in diplomacy.
(7) Records and publications of the League of Nations.
(8) Decisions of national judicial bodies.
(9) Statutes of national legislative bodies.
(10) Public documents not elsewhere specified (publications of governmental bodies of all kinds, including hearings and debates of, and communications to legislative committees).
(11) Maps.
(12) Statistics compiled by national census offices and departments of commerce.
(13) Business correspondence of firms engaged in international trade or finance.
(14) Correspondence of travelers and resident aliens.
(15) Newspapers.
(16) Magazines, technical and general.
(17) Proceedings of scientific and other private societies and papers there read.
(18) Books.

II. The list of field observations mentioned as desirable in the discussions of the week as finally drawn up included:

(1) Drafting and sending out of questionnaires, and compilation of data from the returns.

(2) The taking of oral testimony from persons engaged in or affected by the organization and conduct of international government.

(3) Direct correspondence with such persons.

(4) Personal observation (attending, watching, listening) of various activities such as international conferences, arbitral tribunals, and meetings of the various bodies of the League of Nations.

(5) Studies by efficiency experts.

(6) General observation in various countries.

(7) Actual experience in the organization or conduct of international government.

(8) Participation in international trade, travel, or communication.

No attempt was made to discover and list all varieties of material and all types of observation desirable in this field. Instead, six specific problems of international organization were taken up, and the materials and observations desirable in any study of those problems were listed. Hence, the two lists just given may omit certain items which did not emerge in the course of the discussions. It is believed, however, that all important varieties of material and of field work are there included.

III. The same method was followed in the attempt to discover the extent to which quantitative methods of measurement were feasible in the study of the problems. Instead of debating that question directly and attempting to form our conclusions on grounds of theory, which would probably have been an uncertain proceeding, we experimented with six specific problems of international organization with a view to discovering how far we could go in applying the quantitative method of treatment to each. It was believed that such a proceeding might warrant certain tentative conclusions regarding the field of international organization as a whole, particularly if the test problems were selected from the field so as to touch upon all types of questions in the field.

What was meant by the phrase "statistical treatment" is probably clear from the terms themselves. It was soon recognized, however, that the feasibility of employing statistics in the study of international organization depended upon two things, namely: (1) The relative frequency with which purely quantitative questions were encountered in that study; and, (2) the possibility of converting qualitative questions encountered into quantitative questions.

As the rapidity of the growth of the treaty nexus in the past century, for example, was a purely quantitative question, it could be dealt with statistically with some success; and in so far as questions of that type occur in our study we can obtain exact results with relative ease. When we encounter a question such as the desirability of the French language for the drafting of treaties, however, the possibility of statistical treatment depends upon the possibility of converting that question of quality into a question, or several questions, of quantity. In the case just mentioned the primary question might possibly be resolved into the following secondary questions: (1) the proportion of treaties concluded in the past century which have been drafted in French; (2) the proportion of treaties where French has been used in the drafting of treaty texts in which disputes have arisen regarding interpretation; the same where English has been used; (3) the number of diplomatic representatives who can employ the French language; the English; and so on.

These secondary questions do not wholly exhaust the problem in this particular case, and they may not be equivalent or adequate conversions of the primary question; but upon the possibility of dealing with qualitative questions in this manner depends the feasibility of exact science in our study.

It will be apparent that the choice of secondary questions to be used in seeking an answer to the primary question depends upon certain assumptions regarding relative values, which themselves ought to be subjected to exact measurement. Thus, secondary question (1), above, assumes that it is desirable to have a given treaty drafted in a language common to the general body of international conventions. To this there might be some objection or demurrer raised. In that case, to anticipate such objection, this assumption should be converted into a second primary question, and a number of further secondary tests devised to answer it, such as: (1) The opinions of recognized authorities on international law and diplomacy upon the desirability of standardized or technical language in treaty drafting; and (2) the testimony of philologists on the feasibility of exact translation; and so on.

If any of these questions, again, are found to rest upon assumptions which are called in question, the same treatment should be applied a second time. The point must be reached where either all disputes and doubts regarding values and premises are resolved in agreement, or it becomes evident that conflicts of taste or preference are involved which cannot be dealt with rationally at all, such as a preference for the color blue rather than red. In the latter alternative the effort

at quantitative solution of the problem is vain; and it was once suggested in the discussions of Round Table No. 8 that this was bound to be true in the field of politics, international politics in particular. It was felt, however, that this conclusion could not safely be accepted or admitted until much further experimentation had been undertaken in the direction of the former alternative.

IV. The problems taken up during the discussions of the round table were:

(1) The selection of personnel for the diplomatic and consular services;

(2) representation in international conferences;

(3) the organization of international conferences;

(4) publications of the League of Nations;

(5) the economic foundations of international organization; and

(6) public opinion and international organization.

The discussion of problem (4) was wholly a consideration of materials, a matter dealt with already. The discussion of problems (1) and (6) resembled the handling of similar topics in Round Tables 1 and 2, and may, therefore, be omitted here. A brief summary of parts of the discussions of problems (2), (3), and (5) will give some idea of the results obtained in the consideration of the quantitative method. For the sake of brevity the partial summaries are here given in outline form.

Representation in international conferences

1. Equality of representation *versus* representation according to rank of power and importance?

a. What percentage of conferences has been based on equality of representation? On proportionality?

b. What percentage of conferences has been handicapped by the application of the equality rule? Study by testing: (1) Percentage of conferences where no agreement was attained because of operation of equality rule, or (2) percentage where equality rule emerged in debates as an obstacle or objection to agreement by the conference.

2. Suitable tests of state rank.

a. Geographical area. What results are obtained by using this standard? How do they compare with common impressions concerning the rank of certain states? What percentage of the area of various states is: (1) Water; (2) desert, and otherwise uninhabitable (jungle, mountains, swamps)?

b. Population. How do results compare with common impressions? What proportion of the people of various states are: (1) Illiterate; (2) savage; (3) paupers?

c. Naval power. Compare work of ranking states in this respect at the Washington Conference; account to be taken of obsolete units, gun elevation, speed of navigation, and so on, along with obvious qualities of displacement, armament (number and caliber of guns), personnel, and so on. How do results of ranking by naval power compare with ranking by next standard given below?

d. Military power. Take into account standing army, reserves, efficiency, equipment, and so on. Compare with ranking by naval power and air power.

e. Air power, as in *c* and *d*.

f. Commerce. Foreign commerce, both export and import, and returns from carrying trade, foreign investments, and so on. Turn from commerce, which does not show profit or loss, to next test:

g. Income. Of people, not of government (*i.e.*, taxed or untaxed).

h. Capital wealth (natural, industrial, financial).

i. Labor supply, quantity and quality.

j. Civilization. Test via statistics regarding: (1) Infant mortality; (2) adult morbidity and mortality; (3) literacy; (4) pauperism; (5) illegitimacy; (6) criminality; (7) books published per capita; (8) periodicals and newspapers; (9) public libraries; (10) schools, and so on.

Summary: Rank states by all these tests (a–j); note variations; construct composite formula, or apply ranking to attain most balanced result.

Organization of international conferences

1. Membership. Increase of use of experts in connection with conferences? Proportion of problems dealt with requiring scientific treatment; increase of such problems? Frequency of failure of conferences where experts were not present, or were ignored (measure failure by necessity for revision of agreements made, apart from alteration of circumstances, and by opposition to execution after signature; also by a survey of the consensus of opinion of authoritative historians)?

2. Plenary sessions and committees. Percentage of conferences where no plenary sessions were held? Where no committees were used? Where agreements were drafted in committees? Percentage

where agreements were signed in plenary sessions? Increase in use of committees? Correlation between topics of agenda and committees created? Increase of number of topics on agendas?

3. Secrecy and publicity. Percentage of conferences where plenary sessions were open to public or press? Where committee sessions were open? Where daily summaries of results were given to the press? Where daily summaries of debates were given out? Where participants gave out statements of their demands or of transactions in progress? Where resulting agreements were published at conclusion of conference? Where failure of publication caused opposition to resulting agreements? Where publicity caused interruptions or difficulties in conference?

Economic foundations of international organization

1. Development of international organization in general (descriptive). Correlation of growth of international trade, postal communications (letters, money orders, parcels), railway, shipping accommodations and traffic, with growth of consular services, commercial treaties, claims settlements, passport control, creation and development of international bureaus?

2. Effectiveness of international administrative bodies dealing with economic interests. Percentage of all bureaus which deal with such interests? Smoothness of operation of such bureaus (absence of interruptions), especially in comparison with other bureaus? Quickness of response of member states to regulations issued? Rapidity of adhesion of other states? Willingness to abide by majority votes? Settlement of disputes without delay or recourse to outside agencies? All should be measured absolutely and in comparison with other bureaus.

3. Need for other organs of international government in the economic sphere. Percentage of treaty agreements (use treaty articles as units) dealing with economic matters? Percentage of diplomatic correspondence relating to same? Of arbitral awards? Percentage of international disputes arising out of economic conflicts? Percentage of international trade subject to any sort of international regulation? Of international travel and communication?

Obviously, the experimental discussions possible in the few days of the conference could only permit the beginning of a type of treatment such as this. Much skill must be applied in the elaboration of further quantitative tests for answering questions such as those

given above, and for eliminating errors in observation, computation and inference.

In conclusion, an attempt was made to indicate certain of the more pressing problems and avenues of investigation open for study. A list of some of these is given below:

1. Problems connected with the state-system of the world.
   a. Classification and ranking of the states.
   b. Economic foundations of international organization.
   c. Value of the national state.
   d. The concept of the superstate.
   e. Bankruptcy of states.
   f. Neutralization of territories.
2. Problems in diplomacy.
   a. Personnel selection from outside of the services.
   b. Efficiency of personnel in service.
   c. Equipment of consular and diplomatic posts.
   d. Secret diplomacy.
   e. Democratic control of national diplomacy.
   f. Representative character of consuls.
   g. Personal diplomacy *versus* international legislation.
3. Treaty-negotiation and the science of international law.
   a. Classification of treaties by subject matter.
   b. Classification by form.
   c. The basis of international law (reason, consent, force?).
   d. The voidability of treaties.
   e. Necessity for consent as the basis of treaty obligations.
   f. Codification of international law.
   g. Doctrine of military necessity.
   h. Theory of neutrality in relation to international organization.
   i. Contractual character of treaties.
   j. Sanctions of international law.
4. Arbitration.
   a. Selection of personnel.
   b. Forms of procedure (written and oral pleadings; use of commissions to take evidence, etc).
   c. Effectiveness (claims filed, granted, rejected, recalled, etc.).
   d. Obligatory submission.
   e. Remedial actions under international law.
   f. Arbitration versus judicial settlement.
5. Administration: cosmopolitanism.

a. Personnel selection for international bureaus.

b. Organization of bureaus (large or small; unitary or subdivided into sections, etc.).

c. Basis of representation in bureaus (compared with conferences; object of representation here; etc.).

d. Nature and value of patriotism.

e. International capitalism.

f. International proletarianism.

g. An international civil service.

h. Nature of modern cosmopolitanism.

6. Conferences; peace.

a. Representation in conferences.

b. Organization of conferences.

c. Value of war to individual states (costs, benefits).

d. Nature and value of passive resistance.

e. Value of physical and political defenses (frontiers, armaments, alliances).

f. Effective means for preventing war.

g. Disarmament.

h. Bases of decisions in international conferences (national policy, other facts, statistics).

7. International federation.

a. Prior experiences (numbers, numbers of members, duration, etc.).

b. National federal unions and relative unity of territory, race, culture, etc.

c. National sovereignty and international federation.

d. League of Nations: (1) Nature of (alliance, superstate, etc.); (2) relation to citizens of member states; (3) use of coercion by; (4) effectiveness of, by departments (council, assembly, court, mandates system); (5) advisability of adhesion by United States.

PITMAN B. POTTER.

NEWS AND NOTES

Personal and Miscellaneous

EDITED BY FREDERIC A. OGG

University of Wisconsin

Dr. David P. Barrows, of the University of California, and Professor Leonard D. White, of the University of Chicago, attended the International Congress of Public Administration held at Brussels last August, and both were elected members of the permanent commission of the Congress. Professor White is engaged in a survey of methods of financial control in state governments so far as scientific research is affected. This study is being carried on under the auspices of the National Research Council.

Under the auspices, also, of the National Research Council, Dr. Joseph P. Harris, instructor in political science at the University of Wisconsin, is undertaking a survey of financial control of scientific research in the state of Wisconsin.

Professor James Q. Dealey, of Brown University, has recently been promoted from associate to full member of L'Institut International de Sociologie, which has its headquarters at Paris. Only seven members are selected from the sociologists of the United States. On December 5, Professor Dealey gave an address at Brown University on "The Centennial of the Monroe Doctrine."

Mr. Edward J. Woodhouse, associate professor of government at Smith College, was elected mayor of Northampton, Mass., on December 4.

Professor John M. Mathews, of the University of Illinois, has been promoted to a full professorship of political science. Professor Mathews has in press a volume entitled "American State Government" which will be published shortly by D. Appleton & Company.

Dr. Harold R. Bruce has been promoted to a full professorship of political science at Dartmouth College, and Mr. Ordean Rockey, who last June completed his studies at Oxford as a Rhodes scholar, has been appointed as instructor.

Professor John C. Dunning, of Brown University, is giving a series of ten lectures in Providence on "Contemporary Statesmen in International Affairs."

Dr. F. A. Middlebush, associate professor of political science and public law at the University of Missouri, has been raised to the rank of professor and made chairman of the department.

Dr. A. T. Mason, who completed his graduate work at Princeton University last June, is now assistant professor of political science in Trinity College, Durham, N. C.

Stanford University has instituted a course on citizenship under the general direction of Professor Edgar E. Robinson of the Department of History. The lectures are given by members of various departments, and the teaching is done by four instructors brought to the University to do this particular work, namely, Miss Margaret Elaine Bennett, Mrs. Flora May Fearing, and Messrs. Henry Stow Anderson and Joseph Gregory Matin.

Dr. Earle H. Ketcham, instructor in political science at the University of Illinois, has been appointed associate professor of political science at the University of Oklahoma.

At the winter session of 1923 the legislature of Arkansas passed a law that no student shall be granted a diploma by any high school unless he or she has had a year's course in American history and government. No university, college, or normal school chartered by the state may grant any degree to any candidate who has not met this requirement, either in high school or in college. The rule does not apply to students who registered prior to September, 1923.

The former Oriental Academy at Vienna has been reorganized as the Consular Academy, under the direction of the ministry of foreign affairs. It is operated on the lines of a college and offers instruction in economics,

modern history, commerce, finance, international law, languages, and other subjects which contribute to preparation for the diplomatic and consular services. Students from foreign countries are welcomed.

The Institute of International Education (522 Fifth Ave., New York City) has published a pamphlet describing the various fellowships and scholarships granted under its auspices. These appointments are offered to American students desiring to study in foreign countries, and to foreign students desiring to work at American universities.

In the new Graduate School of Economics and Government at Washington University (St. Louis) a plan has been instituted to secure correlation with the research work carried on at Washington, D. C. by the Institute of Economics and the Institute for Government Research. Thirty fellowships have been provided for the present year, and ten students are at work in Washington under the auspices of the combined institutes.

At the forty-third annual meeting of the Academy of Political Science in the City of New York, held on November 19 and 20, the general theme of discussion was American economic policies since the armistice, and the subject was handled under four heads: agricultural policies, tariff policies as affected by post-war conditions, the immigration policy of the United States, and transportation and fuel.

The Social Science Research Council met on Nov. 10 at Chicago. Committees were authorized on the following projects: The preparation and publication of a digest of social science material; a survey of the scope and method of social research agencies; the annual publication of an index and digest of state session laws. It was decided to recommend to the constituent associations in the council the appointment as council members of three persons from each association, for a term of three years, one retiring each year. The following resolution was recommended for concurrent adoption by the associations constituting the Council.

WHEREAS the scientific study of state legislation in the United States is seriously hampered by the lack of an adequate index and digest of the laws passed by the various states

THEREFORE be it resolved that the association hereby petition the Congress of the United States to make an appropriation adequate for

the preparation and publication of an annual index and digest of state session laws through the agency of the library of Congress.

The American Statistical Association has appointed the following members of the Social Science Research Council: Professor W. F. Willcox, of Cornell University; Professor E. E. Day, of the University of Michigan; Professor H. L. Rietz, of the University of Iowa.

Three governments have communicated to the Pan American Union the names of their representatives on the International Commission of Jurists, in accordance with the provisions of a resolution adopted by the Fifth International Conference of American States, held at Santiago, Chile, in March and April last. The government of Guatemala has named Sr. Lic. don Antonio Batres and Sr. Dr. don José Matos; the delegates of Panama are Sr. Dr. Eusebio A. Morales and Sr. Dr. Horacio F. Alfaro; while the United States will be represented by Dr. James Brown Scott and Professor Jesse S. Reeves. All are prominent in the affairs of their respective countries, and have held positions of trust and responsibility.

The commission, which is to meet at Rio de Janeiro in 1925, on a date to be determined by the governing board of the Pan American Union in agreement with the government of Brazil, was originally created by the Third International Conference of American States, which adopted a convention providing for an international commission of jurists, to prepare a draft of a code of private international law and one of public international law. The commission met at Rio de Janeiro from June 26 to July, 1912, with delegates of sixteen countries in attendance. Six committees were organized at the first meeting, which were to meet in different capitals of the American republics to consider various phases of international law; and committees were also appointed to report at once upon a tentative draft of two conventions covering extradition and the execution of foreign judgments. The consideration of the convention on the execution of foreign judgments was referred to one of the special committees; while the convention on extradition, although adopted by the commission, has never been acted upon by any of the governments represented at the conference. The commission then adjourned to meet again in 1914, but owing to the outbreak of the European War this meeting never took place, nor has any meeting been held since that time.

With the object of continuing the work started in 1912, the Fifth International Conference of American States adopted a resolution

reorganizing the commission, and requesting each government of the American Republics to appoint thereon two delegates. In addition to the program mapped out in 1912, the commission has been entrusted by the Santiago conference with a number of additional functions, among them consideration of the status of children of foreigners born within the jurisdiction of any of the American republics; the rights of aliens resident within the jurisdiction of any of these republics; and the study of the project submitted by the Costa Rican delegation to the Fifth International Conference of American States for the creation of a permanent American court of justice. The resolutions of the commission will be submitted to the Sixth International Conference of American States, to meet at Havana, Cuba, in order that, if approved, they may be communicated to the respective governments and incorporated in conventions.

Annual Meeting. The nineteenth annual meeting of the American Political Science Association was held at Columbus, Ohio, December 27–29, 1923. One hundred and fifty-one members were registered —a larger number than at any previous meeting in the history of the Association. The American Historical Association, the Mississippi Valley Historical Association, and a number of other historical societies were in session at Columbus at the same time. A joint session was held with the American Historical Association for the delivery of presidential addresses, and a joint subscription luncheon with that association and the National Council of Teachers of Social Studies, for consideration of the place of social studies in the schools.

The program of the Political Science Association opened with a session on local and municipal government, presided over by Professor James Q. Dealey, of Brown University. Professor R. S. Saby, of Cornell University, discussed Recent Tendencies toward Simplified Judicial Procedure in Municipal Courts; Professor C. C. Maxey, of Western Reserve University, described Cleveland's experience with proportional representation, on the basis of the municipal election of 1923; Professor E. A. Cottrell, of Stanford University, presented a paper entitled Comparable Municipal Statistics; and Professor I. L. Pollock, of the University of Iowa, presented one on Problems in County Government and Administration. The session was largely attended and proved one of exceptional interest.

At the joint subscription luncheon the general theme was Social Studies in the Schools. The Political Science Association was repre-

sented in the discussion by Professors W. B. Munro, of Harvard University, and T. H. Reed, of the University of Michigan. Both stressed the fundamental position which instruction in government ought to be given in the school curriculum.

A very successful afternoon session was devoted to the general subject of Colonies, Mandates, and the Far East. Professor F. W. Coker, of Ohio State University, presided, and papers were read as follows: Teaching Citizenship to the Filipino through Local Self-Government, by Professor O. G. Jones, of the University of Toledo; the Mandate System as an Antidote to Imperialism, by Dr. Raymond L. Buell, of Harvard University; and Some Aspects of China's Constitutional Problem, by Professor H. S. Quigley, of the University of Minnesota.

At the evening session set apart for the delivery of the presidential addresses Dr. Harry A. Garfield, president of the American Political Science Association, spoke on Recent Political Development: Progress or Change? and Professor Edward P. Cheyney, president of the American Historical Association, had as his subject Law in History. Dr. Garfield's address is printed in this number of the REVIEW.

At the Columbus meeting, as at the meeting held in Chicago in 1922, a prominent place on the program was occupied by the report of the committee on political research, together with discussion of matters suggested by it. With Professor William B. Munro, of Harvard University, presiding, papers were read at the first session devoted to this subject as follows: The Significance of Psychology for the Study of Politics, by Professor Charles E. Merriam, of the University of Chicago; Political Science in Great Britain, by Professor John A. Fairlie, of the University of Illinois; and Political Science in France, by Dr. Walter R. Sharp, of the University of Wisconsin. A second meeting on the subject took the form of a subscription luncheon at which Professor Merriam made a report on the organization and activities of the Social Science Research Council, followed by a description by Professor A. B. Hall, of the University of Wisconsin, of the National Conference on the Science of Politics held at Madison last September, together with a discussion of questions of policy connected with the holding of future conferences of the kind. Professor F. H. Guild, of Indiana University, related his observations and experiences at the Madison Conference.

The afternoon of the second day was divided between a general session on the subject of Popular Government and Parties and the annual business meeting of the Association. At the former Professor C. G. Haines presided, and papers were read by Professor H. F. Wright,

of Georgetown University, on Some Foundations of Popular Government in Contemporary Europe, and Professor Phillips Bradley, of Wellesley College, on Cohesiveness of the Farm Bloc. A paper on the British Labor Party, by Bertram Benedict, of New York City, was read, in the absence of Mr. Benedict, by the chairman of the program committee, Professor R. C. Brooks.

An evening session was devoted to the League of Nations, with Professor J. S. Reeves, of the University of Michigan, presiding. Professor Charles E. Hill, of George Washington University, presented a survey of the achievements to date of the Permanent Court of International Justice. Professor A. S. Hershey, of Indiana University, discussed the League of Nations as an Organ of Public Opinion, and Dr. Denys P. Myers, of the World Peace Foundation, analyzed the Practical Operation of the League. Finally, an address was made by Dr. Fannie Fern Andrews, president of the Boston Branch of the American Association of University Women, on the Influence of the League of Nations on the Development of International Law. At the close of this session a smoker was tendered the members of the various associations by the Ohio Archaeological and Historical Society.

On the morning of the closing day the subject was State Government, and with Professor A. N. Holcombe, of Harvard University, presiding, papers were read as follows: Vested Rights and the Doctrine of Implied Limitations on Legislatures in American Constitutional Law, by Professor C. G. Haines, of the University of Texas; The Increase of the Governor's Power through Financial Control of the Administration, by Dr. H. A. Barth, of the University of Pennsylvania; Fiscal and Administrative Control in the State Government of Pennsylvania, by Clyde L. King, secretary of the commonwealth of Pennsylvania; and the Missouri Constitutional Convention by W. W. Hollingsworth, of Washington University.

The meeting closed with a subscription luncheon which took the form of a conference on administration. Professor W. J. Shepard, of Washington University, presided, and a paper by Dr. L. L. Thurstone, of the Institute of Government Research at Washington, entitled The Field for Research in Personnel Administration, was read, in the author's absence, by Mr. W. C. Beyer, of the Philadelphia Bureau of Municipal Research. Mr. Beyer also commented at some length on the paper. An account of the Second International Congress of Public Administration was given by Professor L. D. White, of the University of Chicago, who was in attendance at the Congress.

The executive council and board of editors held two sessions on the opening day of the meeting, and the annual business meeting of the Association was held on the afternoon of the second day. The report of the secretary-treasurer on the membership and finances of the Association may be summarized as follows:

I. Membership

Members added during the year	163
Resignations (including cancellations for non-payment of dues)	138
Net gain in membership	25
Applications for membership in hand	19
Total number of members paying annual dues	1416
Life members	55
Total membership, December 15, 1923	1471

The various methods employed to obtain new members were described, and it was pointed out that, although the number of accessions during the year was very satisfactory, it was almost balanced by resignations and cancellations, and that considerable effort is necessary to maintain the increase of membership which has been going on during the past three years. The hope was expressed that members generally will see that persons who would be likely to be interested in the work of the Association are invited to join, or at all events that their names are reported to the secretary of the association.

II. Finances

1. Balance on hand December 15, 1922		$8.72
2. Receipts December 15, 1922 to December 15, 1923		
Dues for 1920	$4.00	
Dues for 1921	52.00	
Dues for 1922	188.00	
Dues for 1923	4047.39	
Dues for 1924	840.90	
Voluntary contributions for the REVIEW	537.00	
Sale of publications	355.32	
Advertising	202.50	
Royalties	15.75	
Total receipts		$6242.86
Total balance and receipts		6251.58

3. Expenditures		
Bills paid for 1922	$306.53	
Williams & Wilkins Co., Baltimore (printing and distributing the REVIEW)	3975.87	
Clerical and stenographic assistance, office of secretary-treasurer	322.60	
Clerical and stenographic assistance, office of managing editor	405.15	
Postage, office of secretary	107.00	
Stationery and printing	155.75	
Railroad fare, secretary-treasurer and acting managing editor on account of council meeting	75.73	
Expenses, legislative notes for REVIEW	50.00	
Membership dues for two years in American Council of Learned Societies	134.00	
Payment for reprints (refunded)	68.00	
Sundry items	38.65	
Total		$5641.87
Balance December 15, 1923		609.71
4. Trust Fund		
Balance December 15, 1922 (certificate of deposit at 4% in First National bank, Madison, Wis., due February 10, 1924)	1206.68	
Receipts from life membership (1923)	90.00	
Total		$1296.68

The treasurer's accounts were audited by a committee consisting of Professors J. A. Fairlie and B. F. Shambaugh and were reported correct; and it was voted that, in 1924, as in the preceding year, members be billed for five dollars, with an accompanying explanation that payment of the additional dollar toward the support of the REVIEW is optional, but highly desirable.

The principal reason for the preceding action was the desire to enlarge the REVIEW, entailing considerably increased expense. It was voted that in 1924 the normal size should be 200 pages per issue. In 1923 the actual average for the four issues was 183 pages.

On nomination of the managing editor, the board of editors was reëlected for 1924, except that Professor W. B. Munro is succeeded by Professor A. C. Hanford, of Harvard University, and Professor C. G. Fenwick by Professor Lindsay Rogers, of Columbia University. Professors Munro and Fenwick were retired at their own suggestion, and both have agreed to continue to assist the board of editors.

Professor Charles E. Merriam, of the University of Chicago, presented an extensive report from the committee on political research and also from the recently organized Social Science Research Council. The committee's report called attention to the success of the National Conference on the Science of Politics held at Madison, Wis., in September, 1923, and pointed out that the organization of the Social Science Research Council is a striking indication of increasing attention to improvement in the methods of research in the social sciences and an omen of notable progress in this direction.

The following recommendations of the Association's representatives in the Social Science Research Council were adopted:

1. WHEREAS, it is desirable to obtain active coöperation between the American Historical Association, the American Economic Association, the American Political Science Association, the American Sociological Society, and similar organizations, for the purpose of promoting and coördinating teaching and research and for furthering the development of research methods in the social studies, Resolved that this Association authorizes the appointment by the incoming president of three representatives for a period of three years, one retiring each year, who shall constitute, with similar representatives of any of the societies above named, a Social Science Research Council, to carry out the purposes above stated.

2. WHEREAS, the scientific study of state legislation in the United States is seriously hampered by the lack of an adequate index and digest of the laws passed by the various states, Resolved, that the Political Science Association hereby petitions the Congress of the United States to make an adequate appropriation for the preparation and publication of an annual index and digest of state session laws through the agency of the Library of Congress.

A recommendation was also adopted to the effect that the program committee be recommended to make provision in future meetings of the association for a number of round tables, or conferences, each holding a series of sessions.

It was voted that the incoming president of the association be authorized to appoint two representatives to represent the Association on a joint committee to work with and promote the development of the International Congress on Administration; also that the Political Science Association should invite the following organizations similarly to appoint two representatives to this joint Committee: The National Municipal League, The City Manager's Association, The National Assembly

of Civil Service Commissioners, and the Governmental Research Conference.

The committee on instruction in political science, appointed in pursuance of action of the association at the Chicago meeting in 1922, asked to be discharged, and the request was complied with. The incoming president of the association was authorized to appoint a new committee of this nature which, among other things, should, within the coming year, make a survey of recent and pending state legislation concerning instruction in government, and report at the annual meeting in 1924.

It was voted that the association should continue to be represented on the Joint Commission on the Social Studies and the American Council of Learned Societies.

Officers were elected for 1924, as follows: President, Professor James W. Garner, of the University of Illinois; First Vice President, Professor S. A. Korff, Columbia University; Second Vice President, Dr. W. F. Dodd, Chicago, Ill., Third Vice President, Professor A. N. Holcombe, Harvard University; Secretary-Treasurer, Professor Frederic A. Ogg, University of Wisconsin; and the following persons were elected to the Executive Council for the term ending in December, 1926: Professor John Alley, University of Oklahoma; Professor Charles G. Fenwick, Bryn Mawr College; Professor Ralston Hayden, University of Michigan; Hon. Robert Luce, Washington, D. C., and Professor P. O. Ray, Northwestern University.

In view of the fact that on the principle of rotation the annual meeting of the Association in 1924 should be held in the East, and of the further fact that the American Historical Association will meet at that time in Washington and Richmond, it was voted that the Political Science Association meet in Washington, leaving for later decision by the executive council the question whether the session shall be in Washington only or in both Washington and Richmond.

BOOK REVIEWS

EDITED BY W. B. MUNRO

Harvard University

Theodore Roosevelt. By LORD CHARNWOOD. (Boston: Atlantic Monthly Press. 1923. Pp. 232.)

A remarkable book. A book of appreciation, insight, inspiration, revelation. Not a wonderful book nor a complete book; but a brilliant and permanent addition to the biography of the real Roosevelt.

As for the material part, the volume is unusually trim, well printed and optically readable. A preliminary chronology, a convenience not often afforded by biographers, fixes the main events of Roosevelt's life, including the dates of his formal published works; it is adorned with extracts from Roosevelt's own words.

The book is brief, less than fifty thousand words, subdivided into ten chapters of which seven are devoted to Roosevelt's public life after 1898.

As for the style, it is Charnwood's style; clear, limpid, exact, studded with turns of phrase that stick in the reader's memory. Thus, on the spoils system: "Generations grew up who accepted it—almost as one of the natural beauties of America." On civil service reform: "Most of his utterances display his simple conviction that he had something to teach, a mark which he believed he must make on the ideas of growing America, indeed, of young men anywhere." "He spent his life—largely, by no means solely—in fighting—against evil things." "The world is not likely to come entirely into the ownership of a handful of magnates, but it sometimes comes near enough."

Positive errors are few, which is a feat, considering that Charnwood never met Roosevelt. However, Roosevelt's contemporaries in Harvard College know that the biographer is mistaken in supposing that "Roosevelt was not likely to distinguish himself much" there. He was in the first eighth of his class in scholarship and equally high in leadership. There was much more of Andrew Johnson than a "drunken and undignified successor in office" to Abraham Lincoln. The Philippine islands were not "in insurrection against Spain when the turn of war

threw them into American hands." These are, after all, small matters and it is wonderful that a man whose direct knowledge of America comes chiefly from casual visits, should make so few slips.

The only vital error in the book stands out on the very first page, where the author characterizes Roosevelt as "a powerful and a noble man, whose fate it was for a considerable while to rivet, and indeed fatigue the attention of civilized mankind, then to undergo eclipse, and to die when the eclipse was total." Where has he been, and from whom has he drawn inspiration so that he loses the final and most significant event in Roosevelt's life? How can the author fail to realize Roosevelt's steady gain in public attention (for he never lost public confidence), his acceptance even by his enemies in the Republican Party as the inevitable Republican candidate for the Presidency in 1920, his vindication in 1917 and 1918 as a national seer, captain, and guide? Nothing but the hand of the Almighty prevented the return of Roosevelt to the post where he would again have been the most powerful man on earth—the only American who could have had a free hand in concentrating the enormous weight of American spirit and influence for the benefit of mankind.

Aside from this astonishing mistake, Charnwood's *Roosevelt* is a great contribution to the self-knowledge of the American people, and to a just apprehension of Roosevelt. The review of Roosevelt's earlier life marches steadily and surely. Charnwood has vitalized the youth, the assemblyman, the ranchman, the administrator. He makes you see him, feel him, understand him. His preliminary chapter on "Nineteenth Century America" is startlingly right and suggestive: eighteen pages of distilled wisdom, and a portal to his discussion of Roosevelt's eight years in the presidency, which is his main theme. Throughout, he seizes upon the things that count: Roosevelt's attack on the trusts; his relations to his party and American political methods; his point of view on labor, conservation, the negro, and civil service. All these are summed up in the strong sentence: "Roosevelt set his mark, in heightened capacity and devotion more conscientious and unselfish, on every branch of the service under him, naval, military or civil, with which he had any close contact."

The two chapters on Foreign Policy and Foreign Achievements are perhaps the most interesting and revealing part of the book. Roosevelt's Panama policy is justified without qualification, not by sustained logic and ungainsayable documents, but because the author feels that the crisis justified unusual action; and the national belief and national

Panama Policy ever since that time have stood on that basis. Charnwood tells the true story of Roosevelt's defiance of Germany over the Venezuelan matter in 1902 and of his influence on the conference of Algeciras in 1906. In a word, he treats Roosevelt's domestic and foreign policies as complete wholes, based on a definite and continuous purpose, and not as a series of incidents each of which had to be met as it came along.

The book is the tribute of a consistent admirer of Theodore Roosevelt who believes in his man from start to finish, and understands the workings of his mind. Every friend of the great statesman recognizes Lord Charnwood as a new and welcome friend whose book is true, just and inspiring. He treats Roosevelt as what he was, a great elementary force—a being full of excitement, full of energy, and eternally intent on service. Charnwood has written a great book in small compass.

Yet, after all, does he know the intimate Roosevelt? Can his heart glow like ours, with admiration and affection for the chieftain of the clan? Could Lord Charnwood, or any other visitor from overseas, comprehend, for example, why the Progressive convention of 1916 for one hour and forty minutes kept up its steady chorus of "We want Teddy! We want Teddy! We want Teddy!" We still want Teddy; we have wanted him every day since the day of his death. We want him now.

ALBERT BUSHNELL HART.

Harvard University.

The American Revolution: A Constitutional Interpretation. By CHARLES HOWARD MCILWAIN. (New York: The Macmillan Company. 1923. Pp. xi, 198.)

At last some one has done what ought to have been done long ago, and he has done it with learning and skill. It was not done sooner, I imagine, because the task requires technical knowledge of English constitutional law, familiarity with rather unusual sources and access to materials. The main portion of the volume is devoted to the single question whether the American colonies were legally justified in asserting, as they began to do late in the argumentative controversy, that they were by rights entirely free from parliamentary control. Were they, as they asserted, dominions of the king with which Parliament had nothing to do, or was such a claim quite absurd? This position of the colonies was, in any authoritative or official way, first put forth, though possibly not with absolute conviction, by the Massachusetts

house in the "great controversy" with Hutchinson in 1773, in which Sam Adams appears to have been coached by John. It was not, by the way, as the author says, the Massachusetts Assembly that announced this position, if he means by that term the legislature of House and Council, for it is noteworthy that the Council, strongly combating the able argument of Hutchinson, took quite a different line, recognizing the authority of the Parliament in imperial affairs. The next year John Adams' *Novanglus* was published, elaborately and learnedly defending the position of complete freedom of the American dominions from parliamentary interference. The Congress of 1774, declared the colonies were free from Parliament in all matters of internal polity, an expression not so very different, though Professor McIlwain appears not to have noticed it, from Henry's declaration in 1765 of freedom in all matters of taxation and "internal police." As every one knows, the Declaration of Independence took for granted the legal incompetence of Parliament.

The author presents a careful study of the English precedents and the cases bearing on the problem of the king's dominions, giving particularly those facts and principles connected with the legal position of Ireland, the Isle of Man, and the Channel Islands; and as a result he shows the absurdity of sweeping aside with a magnificent gesture, the whole colonial claim as "absurd." With this "absurd" idea he has no manner of patience. "Except for a few phrases, and the substitution of America for Ireland," the Declaratory Act of 1766 was in tone and wording, the author shows, identical with the Irish Declaration Act of 1719, which announced the complete authority of Parliament over Ireland. At the end of the American war, the Irish Declaratory Act was repealed, and Britain announced, as "established and ascertained forever," the right "claimed by the people of Ireland" to be bound only by the laws "enacted by his Majesty and the Parliament of that kingdom." The whole skilful presentation of legal argument and historical fact deserves attention, but the author's conclusion must suffice: "It is not entirely easy to say with absolute assurance that the British Empire precisely was or was not *One Commonwealth* in 1774, but I do venture to believe that John Adams' view of this pivotal question of the American Revolution seems somewhat more consonant with all the precedents I have been able to find than the opposing theory supported by Lord Mansfield in the eighteenth century, and now apparently held by a majority of American historians."

We are now quite justifiably informed that the American Revolution was essentially a constitutional struggle. The "economic historians,"

the author says, "themselves have performed a valuable service in dispelling" the view, that the colonists were trying to throw off a heavy and oppressive economic burden. They have read themselves out of court, if they came before the tribunal to establish the economic character of the whole movement. Men do not like to pay taxes; neither do they like to be ordered about or to have their cherished institutions brushed away. Somebody ought to read sympathetically the doings and resolves of the Massachusetts legislature when Hutchinson, on the command of a minister, summoned the legislature to meet at Cambridge. Who was Hutchinson and who was a minister that either one had a right to order their assembling away from a place where they claimed a legal right to gather?

The book, as I have said, is essentially an examination of the legal validity of the American positions, especially that of 1774 to 1776. Brief space is given to claims based on charter or natural rights, and little or no space to the desire of the colonists, especially before 1774, to go on substantially as they had been, or to their willingness, while defending their right to self-taxation and internal polity, to recognize the general authority of the crown and the power of Parliament over matters essentially general or imperial. As a constitutional fact, few things are more important than the announcement of compact philosophy, of the possession of "inherent" rights in the people, and of their right to establish their own government and to alter or abolish them; for those sayings—legally sound or not—were taken seriously, and on them constitutions were founded and institutions were raised. What the Americans believed and asserted is for the constitutional historian quite as important as the validity of their claims. But a book cannot do everything. This book has done well what it set out to do, and the reviewer, though compelled to disagree with the author on occasional incidental statements, is grateful, as others will be, for his scholarly and able study.

A. C. McLaughlin.

University of Chicago.

Revolutionary New England, 1691–1776. By James Truslow Adams (Boston: The Atlantic Monthly Press. 1923. Pp. xiv, 469.)

The investigation of American history is becoming so wide-spread and the number of valuable studies of its special events or factors so great, that it is indispensable now and then to present in compendious form the sum and trend of this diversified activity in order that the real lessons of our history may be effectually learned.

The chief value of this book lies in the success with which this difficult task is accomplished for the New England colonies in the period between the English and the American Revolution. But even New England in this period was by no means uniform, and the reader must not expect to find in this volume a substitute for the detailed history of the various colonies. It is rather an interpretation which strives to point out common forces and tendencies, such factors in short as explain the general and more or less uniform divergence which clearly appears at the end of this period between the Americans of New England as a whole and their cousins who remained in the mother country; a real underlying cause of the break-up of the old colonial British Empire.

This divergence is one affecting every side of life, economic, social, intellectual, and political; and it is mainly due to the long continuance of an utterly different environment in the old and the new world. More specifically, it is the effect of a separation of a thousand leagues and of the influence of the conditions of the frontier in America. This is the author's main theme, and in its treatment his general indebtedness to Professor F. J. Turner is everywhere evident and very handsomely acknowledged.

These are nationalistic tendencies of long, slow growth, and it is one of the great merits of the book to emphasize the importance of the earlier, more obscure, and less conscious part of this development, and to insist upon the significance of its intellectual and social sides, as well as the economic, political, and constitutional.

How far we have moved from the eighteenth century, with its idealization of man in a state of nature and its enthusiastic descriptions of American life, can be seen in the author's dark picture of manners, morals, and culture in America at the opening of the same century. If the frontier meant freedom it also meant barbarism. It involved the gradual emergence of the less fit, the less stable, the uncultured, the radical, the dispossessed, and even the criminal. The picture is undeniably very sombre, too sombre, perhaps; entirely to commend it to all believers in democracy, and in almost startling contrast with the tone even of half a century ago, as illustrated in such a book as Frothingham's *Rise of the Republic of the United States.*

Another of the author's theses, which probably none would deny but few have stated so clearly, is that this frontier radicalism engendered an antagonism which was directed against the older, the richer, and the more conservative classes within the colonies themselves fully as much as against England. Such a struggle of ideas and ideals,

involving a real civil war within America as well as a revolution in the Empire alone explains the history and the fate of the loyalists.

In these far-reaching social and political antagonisms England, of course, was steadily on the conservative side, and therefore as American radicalism spread and deepened the quarrel came more and more to threaten the integrity of imperial relations and more and more to assume a political and constitutional character, as the divergence came nearer to its decisive issue. To the reviewer, Mr. Adams' discussion of these final constitutional issues and of their "inevitable" outcome seems a little less happy than his admirable summary of their earlier imperial precedents and of actual colonial conditions. His thesis, several times expressed, is that the colonists, "finding the logic of the situation against them . . . . . retreated from one position to another," that their opposition to "virtual representation" "had almost as little justification in America as in the mother country," that the whole constitutional issue was little more than "constitutional quibblings" in which the American position "was shown to be untenable," and hence that even such a man as John Adams long before 1776 had in reality become a secret revolutionist alarmed at any prospect of reconciliation, and the more radical Samuel, a schemer "for an immediate rupture" possibly as early as 1758.

A study of the precedents for the American position makes it impossible for me to coincide with so low an estimate of the American constitutional contention or, as a consequence, with this distinctly unfavorable view of the sincerity of the chief colonial leaders. But it must be admitted that Mr. Adams is here giving expression to a view that has been obtaining increasing currency in America in the last quarter century, and that in his treatment of these controversial questions he everywhere shows an admirable spirit of fairness and impartiality.

C. H. McIlwain.

Harvard University

The Social and Political Ideas of Some Great Medieval Thinkers. Edited by F. J. C. Hearnshaw. (New York: Henry Holt and Co. 1923. Pp. 224.)

This volume is a collection of eight lectures delivered at King's College, University of London, in the autumn of 1922. The first lecture gives a general view of medieval political thought, by Mr. Ernest Barker. The other seven are devoted each to a single individual:

St. Augustine, in the fifth century, by the editor and Rev. A. J. Carlyle; John of Salisbury, in the twelfth century, by Mr. E. F. Jacob; St. Thomas Aquinas, in the thirteenth century, by Rev. F. Aveling; the remaining four from the fourteenth century—Dante, by Mr. E. Sharwood Smith, Pierre Du Bois, by Miss Eileen Power, Marsilio of Padua, by Professor J. W. Allen, and John Wycliffe, by Professor Hearnshaw. To each lecture is appended a brief and satisfactory bibliography.

It is a characteristic of some familiar histories of thought to represent the middle ages as a period in which there is little of significance in relation to philosophical, political, or ethical ideas of today: many medieval authors wrote out of close relation to the facts of their age; writers who gave systematic expression to their creeds made little appeal to the reason of man, but demonstrated their beliefs rather through the citation of authorities and the analysis of terms. The medieval period is made to seem dry and barren, alien from our thought, both in methods and objects.

Fortunately, an increasing number of students are giving new but valid emphases in their exposition of the explicit thought of the middle ages, and are finding still further significance in that period by discerning the ideas implicit and inherent in the customs and institutions of the time. Thus the period is constantly acquiring a transformed and enlarged interest for us. With some authors this disposition to find new significance in the middle ages and to look there for sources and prototypes of modern ideas and institutions has produced a tendency to give undue emphasis to casual or isolated features and to underrate settled and permanent features.

A special value of the volume under review lies in the fact that, on the one hand, the authors find new reality and inspiration both in the explicit and in the immanent philosophy of the age, and, on the other hand, the authors' precise and comprehensive knowledge, both of the facts of the period and of the writings with which they deal, has saved them from exaggeration. They are circumspect in their generalizations; they do not make their parallels too exact; they do not find too complete or too numerous anticipations of modern thought.

The essays are sketches: although not superficial in any sense, they assume a prior, general acquaintance with the lives and works of the writers considered. Only one of the essays—that on Marsilio—takes a controversial stand: the author assails a familiar opinion that Marsilio, particularly in his views on popular sovereignty and representation, was in advance of his time; Professor Allen's clearly pointed challenges

are arresting, but they hardly disturb the impression of Marsilio as less different than most of his predecessors and contemporaries, from us in his ways of political thought. All of the essays are distinguished by their erudition, by their elegance of style, and by the effectiveness of the illustrations and comparisons which they present. The reader may recognize peculiar clarity, eloquence and suggestiveness in the essays on Dante and Du Bois without overlooking the excellences common to them all. The volume is indispensable to any student of the history of political thought.

F. W. COKER.

Ohio State University.

The Foundations of the Modern Commonwealth. By ARTHUR N. HOLCOMBE, PH.D. (New York: Harper and Brothers. 1923. Pp. 491.)

This work is symptomatic of the changing emphasis which is today visible in political science. Increasingly, attention is being turned from the structure and function of government to its purposes. More and more, are we appreciating the necessity for broad and deep generalizations regarding the ultimate aim, the controlling purpose, the fundamental justification of the state. The pendulum which for a generation has been swinging in the direction of descriptive and factual analyses of institutions is now definitely beginning to describe the arc of theoretical explanation. The body of political theory, however, which is now beginning to emerge, and to which Professor Holcombe's book is a substantial contribution, stands in sharp contrast to the earlier works in the field of pure theory in the more definitely scientific character of the method pursued and the results attained. We are certainly still far from having achieved a satisfactory and final theory of the state, but the path has already been blazed and its general direction and even its end and goal may be dimly discerned.

In the development of the modern theory of the state, the political scientist is relying more upon the newer psychology than upon any other auxiliary discipline. Availing himself of the attained results in the field of social behavior, he is impatiently awaiting further data from the psychologists. Especially, to complete his work, the political scientist must possess a more adequate knowledge of the principles which govern the association of men in groups and the conduct and interaction of such groups.

Professor Holcombe's discussion of "The Foundations of the Modern Commonwealth" is primarily psychological. The reader notes with

approval the novel arrangement of the material. Instead of the traditional and hackneyed chapters on "The Origin of the State," "Forms of Government," "Sovereignty," and "The Separation of Powers," which he expects to find, the treatment emphasizes such topics as "Church and State," "Nationalism," "The Struggle of Classes," "Justice," "Liberty," "The General Welfare" and "The Reign of Law." To be sure such a subject as "sovereignty" is treated, and treated most illuminatingly, but the subordination of this ancient problem, for example, to more living and vital questions is indeed refreshing. As for sovereignty, Professor Holcombe may be described as a moderate. He reflects the influence of Laski and the pluralists but finds ample warrant for preserving the state as the most fundamental and important social institution.

The modern commonwealth, according to the author, is a body of people organized for the achievement of certain ends. These ends are those stated in the preamble of the Constitution of the United States as the purposes for forming a more perfect union: viz., (1) to establish justice, (2) to insure domestic tranquillity, (3) to provide for the common defense, (4) to promote the general welfare, and (5) to secure the blessings of liberty. The book is in large part a commentary on the meaning, the significance, and the implications of these five fundamental purposes. Not only is the history of each of these ideas traced from its earliest origins, revealing a thorough knowledge of the history of political ideas, but their present content is illustrated by a wealth of citation of contemporary authorities, which in some instances constitutes the most adequate brief reviews of the subjects with which the reviewer is familiar. Particularly incisive and clarifying are the discussions of the "police power" as it has been interpreted by the United States Supreme Court, and of freedom of speech and of the press.

The book is something in the nature of a path-breaker, and as such it must be judged. The treatment is perhaps disproportionate in some instances; at times the reader feels that the author has been betrayed into over-lengthy discussions of topics in which he is personally interested, and has neglected others of at least equal importance. The chapter on "The Common Defense" is, for example, practically confined to a discussion of the one problem of freedom of speech and of the press. One wonders why some attention was not also given to that of the conscientious objector. The relation of special discussion to the general subject is sometimes not altogether clear.

Designed as a textbook, with adequate bibliographical notes supplementing each chapter, and written in an easy and attractive style, the author in writing this volume has performed a distinct service to political science. There is no doubt that it will be widely used as the basis for courses in political theory in our universities. Instruction in this branch of political science has been somewhat restricted for the lack of entirely satisfactory texts. To the meeting of this need, Professor Holcombe's work makes a real contribution.

WALTER JAMES SHEPARD.

Washington University.

Labor and Politics. By MOLLY RAY CARROLL. (Boston: Houghton Mifflin Company. 1923. Pp. ix, 206.)

This volume is a scholarly study of one aspect of the relation between labor and politics in the United States. The writer deals in part one with "The Function of Trade Unions and Democracy," in part two with "The History and Program of the Federation;" and in part three with "Law and Politics in the Federation's Program." One of the most useful chapters is the last one which discusses the limitations of the Federation's program as judged by its own standards.

Miss Carroll's study is a painstaking inquiry into the relation of a specific industrial organization to politics and law, and is of great value as a compact statement of the Federation's policy. From the point of view of the student of politics and political parties, it is of course, necessary to examine the relations between the forces of organized labor and the partisan political powers more broadly, in order to obtain the right perspective. The relation of the labor leaders to the party leaders, of the labor group to the agrarian and business groups, the network of local battles in which labor has fought in various cities and states, the labor personnel in public office, the relation of organized labor to various aspects of the spoils system;—all these and many other significant factors must be studied in order to reach an understanding of the attitude of American labor toward politics and government.

The value of Miss Carroll's study lies in the fact that it covers carefully one part of this field, and thus facilitates subsequent studies of a more comprehensive nature.

CHARLES E. MERRIAM.

University of Chicago.

The Genesis of the War. By the Rt. Hon. H. H. Asquith. (New York: Doran & Company. 1923. Pp. 405.)

The World Crisis. By the Rt. Hon. W. S. Churchill. (New York: Charles Scribner's Sons. 1923. Pp. xii, 578.)

Where Are We Going? By the Rt. Hon. D. Lloyd George. (New York: G. H. Doran & Company. 1923. Pp. 371.)

The aim of Mr. Asquith is "to trace the genesis of the war up to its actual outbreak, with especial references to the policy pursued by Great Britain." No one can write with greater authority and the author presents a clear, scholarly and unimpassioned account of the political and diplomatic events from the accession of the ex-Kaiser in 1888 up to 1914. There is practically no suggestion of bias unless it is a slight tendency not to dwell sufficiently upon the German point of view. For example, is the significance to Germany of the Franco-Russian Alliance adequately emphasized?

Mr. Asquith shows to what an alarming extent feeble or unscrupulous people may guide the destinies of nations. There is no exaggeration in his estimate of the part played by von Bülow in initiating the *Weltpolitik* of 1900, or in his description of the "inconceivable credulity" of the Kaiser, an example of the "readiness of a credulous and prejudiced judgment to accept gossip for evidence and rumour for proof." It is a depressing tale of fear, suspicion, and stupidity bringing about a diplomatic impasse. The diplomatic problem is given in a nutshell (p. 156): Germany persisted in the belief that England was pledged to an anti-German alliance with France and Russia. The whole of the section on pre-war preparations shows the universal suspicions which existed in Europe, a situation which forced even England, one of the least involved, to prepare for extreme contingencies.

It was the naval policy of Germany with her disdainful refusal to agree to a "holiday" that led to strained relations with England. The immediate diplomatic problems which baffled all attempts at solution and finally led to war arose mainly from Germany's "enmeshment in the tangle of Austrian interests, Austrian ambitions, and Austrian intrigues in the Near East" and from the "Germanisation of Turkey which had been going on for years," and had aroused the antagonism of Russia.

The second volume, by Mr. Churchill, is a brilliant and thrilling account of battles on land and sea; it is also an *Apologia*, and on the whole free from vindictiveness. The Dardanelles campaign is the central topic and the author analyses with wonderful lucidity the

possibilities attached at various times to an "amphibious" attack in the Eastern theatre of war. If the interesting selection of correspondence is accurate in fact and unbiassed by omission, then it shows beyond question that Mr. Churchill never doubted the momentous military and political importance of the Dardanelles project. His letters and minutes demonstrate not only his remarkable energy at the Admiralty, but also his frequently amazing power to appreciate immediate and future situations both from military and naval aspects. No hesitation is displayed in publishing private documents; and the disclosure of the perpetual indecision, inertia and even incompetence at the War Office, in the Admiralty and in the field, is to the layman a very substantial vindication of Mr. Churchill's actions while at the head of the Admiralty. Chiefly because of the unrestrained use of highly secret correspondence the book is an important contribution to the history of the war. It is hard to concede that respect for the dead demands the suppression of interesting official documents. Contemporaries of Mr. Churchill will doubtlessly demur and an occasional arrogance in the dogmatic assertion of the absolute truth of *his* statements will bring bitter criticism and further contributions to history.

A heterogeneous collection of "running comment on the European situation" may be put in book form only because the world hangs on the lips of great political figures. The language of Mr. Lloyd George is of the platform type, not always or even mainly good, and frequently extravagantly rhetorical. There is no logical sequence in his ideas and his economic analysis is that of a dillettante. Yet the book will interest almost any reader because the topics range from a eulogistic appreciation of Gladstone, a glowing tribute to the part played by Michael Collins and Arthur Griffith in the Irish settlement, and a generous plea for the Jews, to digressive insertions on Prohibition and the imperfections of the machinery of democracy.

In the preface an interesting summary is given of the hitherto undisclosed proposal placed before the Allied Conference of August, 1922, by the British, to provide legitimate guaranties for the payment of reparations. France alone rejected this offer. The first four chapters deal with the war atmosphere in Europe bred of the irrationality of fear. A union of all churches, he believes, is the only panacea for war.

In spite of an exasperating attempt to defend the Treaty of Versailles by stressing the worth of the ephemeral labor clauses, the attitude of Mr. Lloyd George in his *quo vadis* volume indicates that he sees in it a colossal blunder. To say that the treaty delegated the responsibility

of assessing Germany's liability to the Reparations Commission, a body not bound by any 'particular code or rules of law or by any particular rule of evidence or of procedure' is not to add to its merits!

In his review of the political situation Mr. Lloyd George makes overtures for a *rapprochement* with the Asquithians and attacks the socialism of the Labor Party. There is no half-measure in his antagonism to the policy of Poincaré, whose diplomatic successes he attributes to dissension and "tranquillity" in the British cabinet.

A book which might have been so much better is difficult to appraise; it is hazy—the insertion of footnotes when obscure political events are cited would be an improvement—and it lacks a connecting theme. One wonders if political exigencies have prevented the things worth saying from being said sooner. The explanation of its author that "the men who really understood both the Versailles treaty and the Balfour note have been too busy to find time to inform, to interpret, and to explain," (p. 257) is not convincing.

REDVERS OPIE.

Wellesley College.

The Republics of Latin America: Their History, Governments, and Economic Conditions. By H. G. JAMES and PERCY ALVIN MARTIN. (New York: Harper and Brothers. 1923. Pp. x, 533.)

From a joint work by two specialists in the Latin-American field, respectively professors of government at the University of Texas and of history at Stanford University, much would be expected, despite the fact that this book is intended chiefly for a condensed textbook in schools and colleges. According to the authors' own statement, they have endeavored to present the history, government, and economic conditions in each of the twenty republics within a single volume, realizing the great difficulty of such a task. From limitations of space, they have, therefore, been compelled to adopt arbitrary limits for the various sections, and do not expect that everyone will agree with them in the emphasis given to the different phases of the subject.

The book is divided into four main parts, treating: (1) The Spanish and Portuguese background and colonial institutions, 78 pp.; (2) the wars of independence, 33 pp.; (3) the history of the individual countries since independence and their governments (including concise economic data), pp. 109 to 446; (4) international policies and problems of the various republics, including the Monroe doctrine, relations with Europe, and connections with the World War, pp. 447 to 493. The book ends with 33 pages of bibliographical data.

The early historical section follows the usual line of treatment accorded the subject in the average university course on the Latin-American republics. It is interesting to note that the authors have decided on the use of the popular term "Latin America," although of the conviction that "Hispanic America" is a better designation. While from the very nature of the book, the historical part can lay little claim to originality, the summary of the Spanish background and of the outstanding colonial institutions established by Spain in the Americas has been done in an excellent manner, and embodies practically all recent research by specialists in the field.

In the chapters devoted to the history and government of the various countries, the authors had an excellent opportunity to supply the urgent need for a convenient summary of the history of the past twenty or twenty-five years, but have given little more than appears in older works of this nature. It would seem much better to have sacrificed some of the details of the better known period following independence in order to make room for the most recent developments. Only in the case of Mexico and the West Indies has this been done in a satisfactory way. After the care taken to trace the transition from the colonial to the forms of republican government finally adopted, it is disappointing to find so general a disposition to slight the later years, as though their events were not vitally important in relation to the present political, economic and social conditions which the student or business reader must grasp to some extent if our Latin-American educational courses are to be justified. Here we find that some practical readers will be inclined to criticise the application of a diminishing rather than a broadening perspective.

The governmental data consist of a careful analysis of the constitution now in force in each republic. While the authors state in their introductory statement that they will point out differences between theory and practice, this plan has not been carried out well in the treatment of the individual countries. A great deal of very useful information is given, however, in these summaries of constitutional provisions, especially in regard to such matters as the organization of the legislative bodies, dates for the meeting of the various congresses, and the process of legislation. This portion of the work is generally up-to-date, but it has been impossible to introduce changes that have taken place since it went to the publisher, such as the fact that there is now no prohibition in Peru against a president succeeding himself for consecutive terms of office.

Least satisfactory is the economic material included under each country. As a rule, this is entirely out of date, the year 1918 having often been chosen for statistical purposes, without mention of the abnormal business conditions of that year. In most cases it would have been possible to give statistics two or three years later, which would be more representative of present economic conditions. The limited space given to economic phases and the obvious lack of effort to include the most recent figures available would indicate the minor degree of interest felt by the authors in this phase of their work.

The chapter on international relations is interesting, and includes material not conveniently available elsewhere. The description of European contacts with the various republics is especially valuable, although very brief on account of limitations of space. The rôle played by each country in the World War is also described. The treatment of such matters as the Monroe Doctrine, Pan-Americanism, and Pan-Hispanism affords a good summary of these important matters.

In reviewing the work as a whole, unqualified approval can be given it as a long step toward the organization of our information on Latin America. It will undoubtedly become a recognized textbook and work of reference. Among the multitudinous facts presented—perhaps only the authors and the conscientious reviewer will realize their number—some are in error, and it is hoped that in later editions they may be corrected. An impression is conveyed that economic ground is covered as a means of broadening the book's appeal and sale. This may be justified as a means of inducing the business reader to assimilate useful facts of history and political science.

The book is generally well-edited, although there are some evidences of haste in publication. Spanish names are correctly given and carefully accented, in contrast to the carelessness often characteristic of English language books in this field. The bibliography is weak in economic publications, and it is surprising that some valuable monographs published by the department of commerce on certain Latin-American countries are not even mentioned, although constituting the most recent and authoritative sources on their respective subjects.

The reviewer acknowledges the collaboration of Mr. C. A. McQueen in preparing this comment and criticism.

W. E. Dunn.

Washington, D. C.

Hispanic-American Relations with the United States. By WILLIAM SPENCE ROBERTSON. (New York: Oxford University Press, American Branch. 1923. Pp. xii, 470.)

This is the most inclusive and thorough treatment of the Latin-American relations of the United States yet published. It is not confined to diplomacy, the author's particular field, nor even to trade, industrial enterprise and finance, but deals also with the influence of constitutional ideas, of educational and religious activity and of geographical and medical discovery. The compression necessary for treating each topic in detail gives the work the character of an extensive outline. Valuable as this is, it naturally risks becoming a mere catalogue of events, a danger which is at times not avoided in spite of summaries which close the chapters. Too frequently facts are given without emphasis upon their significance and relationship, and underlying issues are neglected. Some subjects, such as the exploring expeditions (Chapter IX) and the instances of mediation and arbitration (Chapter V), fare better with the episodic method than do others, notably the history of the Latin-American policy of the United States in Chapters II and IV and the consideration of constitutional influence in Chapter III.

It is perhaps inevitable that brevity should sometimes be misleading, as in the account of the origin of Uruguay (p. 21), and that such errors should creep in as the citation of the fictitious "Treaty of Verona" (p. 43). Inevitable, too, are omissions in a work covering so much ground. Chapter VII on "industrial enterprises" deals with railroads, steamship lines, cables, mining, banks, but neglects sugar and oil. Poinsett's mission to Mexico is mentioned several times, but there is no discussion of the Mexican War. Diplomatic and financial intervention, in Nicaragua are treated without reference being made to armed intervention, and only one sentence concerns relations with the Dominican Republic since 1914. This can scarcely be due, however, to a desire to avoid unpleasant matters, in view of the impartial and even sympathetic manner in which other Spanish-American grievances are handled. Some omissions are in part explained by the fact that the book was completed in 1919, and unfortunately has been published practically without change. From this fact results also incompleteness in the list of secondary authorities. The bibliography is extensive and arrangement by topics would have made it more useful.

Defects of detail do not however seriously impair the value of the book. It is, therefore, the more to be regretted that the path of the general reader through text and book-lists has not been made clearer,

for the work is an important addition to the small group of books that introduce us to Latin America by the way of history and fact rather than of generalization and ephemeral comment.

R. F. ARRAGON.

Reed College.

The Russian Soviet Republic. By EDWARD ALSWORTH ROSS. (New York: The Century Company. 1923. Pp. xvii, 405.)

The reading public has been satiated with books on Russia. The cause for this attitude lay in the books themselves. For the most part they were stale stuff. Careful research, discriminating judgment and the gift of insight were wanting. So much the greater is the pleasure, then, in reading Professor Ross' latest work on the course of revolution in Russia. It is a refreshing survey of one of the most significant movements in the twentieth century. The author shows wide familiarity with the sources of information now available to the western world. His spirit is scientific and critical, and the fidelity with which he attempts to set forth a true picture of the facts, his unwillingness to distort the recital, and his cautious yet highly stimulating conclusions, all mark the book as one in which the reader can place larger confidence than has been his wont in recent years.

It is the reviewer's belief that further evidence will accumulate to strengthen the general picture which has been drawn in this book. It was his fortune to be one of a company of five which made an entry into Russia by way of an old Karelian trail in February and March of 1918. M. Grénard, under appointment as French consul-general at Moscow, was one of the party. In the discussions of the situation created by the collapse of the eastern front the determination of the allies to create a new eastern front, even as far east as the Urals if necessary, was disclosed by Grénard. A few days after he arrived at Moscow the large credit in rubles which is mentioned by Professor Ross was placed by the French government at the disposal of the Czechoslovaks. From that moment the coöperation which had characterized the relations between the Czechs and the Soviets began to give way to suspicion and ultimately led to the Ural front established by the Czechs and for a short time maintained by Kolchak. It is a fair conclusion from the evidence at hand, either that the allies were not dealing candidly with the Czechs and were deliberately creating a situation which would make them available for the new eastern front, or that the Czechs were in collusion with them in the enterprise to interfere in the internal

situation in Russia. The former is more probable, but only the archives or the memoirs of responsible parties can disclose the facts.

The myth of the arming of German, Austrian and Turkish prisoners of war in Siberia is effectively handled. In April and May, and again as late as August and September of 1918 the reviewer through personal travel and on the basis of confidential reports from trusted observers had occasion to summarize the situation with respect to the use of prisoners of war by the soviets. It was his judgment then that not more than four or five hundred of the hundreds of thousands of war prisoners in all Siberia were available for use by the soviets. The great majority of them were not approachable, and most of the others were far too demoralized in spirit and physical strength to be usable. The Czechs found that the recruits whom they picked up from the camps could be made serviceable only by careful and prolonged attention and by contact with the stimulating endeavor of effective units.

Important parts of the book are devoted to a survey of the administrative, economic and cultural aspects of the soviet régime. The solid character of the agrarian revolution is recognized. The author indicates the belief that the supreme grievance of the Russian church is that it has been disestablished. To students of the social sciences it is assuring to have the outcome of the Russian experiment in production on the public account cited as a vindication of orthodox as distinguished from Marxian economics. Nevertheless, it is recognized that although communism has demonstrated its own unworkableness, it has given to the revolutionary spirit loosed by Russia the goal of a more reasonable and humanized private capitalism which will leave far less room for "neverworks." The impacts of the Russian revolution will continue to be felt by the children of the third and fourth generation.

The author's sensitive soul more than once gives evidence of his passionate scorn and contempt of the methods employed to combat the energies generated in Russia's revolutionary experience. With many this will impair the authoritative character and revive prejudices all too dearly cherished. By far the larger number will be grateful for a serious attempt to winnow the truth from the mountain of chaff about Russia.

RUSSELL M. STORY.

University of Illinois.

History of British India under the Company and the Crown. By P. E. ROBERTS. (Oxford: The Clarendon Press. 1923. Pp. v, 625.)

The Political System of British India with special reference to the Recent Constitutional Changes. By E. A. HORNE. (Oxford: The Clarendon Press. 1922. Pp. 184.)

India in Ferment. By CLAUDE H. VAN TYNE. (New York: D. Appleton and Co. 1923. Pp. xii, 252.)

Mr. Roberts has given us again the results he prepared for the *Historical Geography of the Dominions*, edited by Sir Charles Lucas. Parts I and II of Vol. VII are here republished in more compact form. The book is an excellent survey of the political and military history of India. Until the beginning of the nineteenth century, it is clearly based on a study of source materials. Then for nearly seventy-five years the author seems in the main to have summarized in rather arid fashion the ordinary political histories. For the history of the last fifty years there is evidence of recourse to Parliamentary Papers. Throughout, the social and economic life of India suffers from neglect. As a whole, therefore, the book is a conventional but convenient manual, useful for collateral reading, and generally presenting the official point of view.

Mr. Horne's book is a closely reasoned and compact statement of the problem of administration and constitutional government in British India. It is based on lectures given at Harvard in 1921 and with advantage could have been expanded by supplying explanations and by giving even the student more than a syllabus. Testing it again and again it is surprising to find how much is, however, referred to in the closely written pages of this small book. It is, therefore, an excellent analysis of the subject. Undoubtedly other lecturers will find it of rare service; but as a general book on a vitally important subject it lacks literary flesh and blood. The bones, however, are there.

Mr. Van Tyne's book pleasantly lacks the flippant tone that marked his lectures at Williamstown in 1922. The net result is an earnest, well-written survey of Indian social and political conditions as they appeared to the writer in 1922. He confesses to a prejudice in favor of "cleanliness, sanitation, hygiene, universal education and the necessity for political fitness." In short we see India as Mr. Van Tyne saw it, with all his ignorance of oriental history, habits, customs, and religion. He puts everything to the test of practical American observation. The result, therefore, is an overwhelming verdict in favor of the British *raj*.

Of these three books the most valuable to the student of political science is the *Political System of British India*. Mr. Horne, who is of the Indian Educational Service, has made a real contribution. Perhaps the most valuable chapter is that which deals with the "Gestation of Reforms, 1914–1919." Here are summarized the various proposals which so agitated Anglo-Indian and Indian opinion prior to the passage of the Government of India Act of 1919. Mr. Lionel Curtis contributed, in large part, a diversion of the issue which the author rightly describes "as little short of madness." The plan embodied in the Joint Address on theoretical grounds "is possibly the most satisfactory which could be devised;" but "in the light of practical considerations" the plan supported by Mr. Curtis was disregarded. The authors of the final act "had no hesitation in rejecting the scheme." Aside from the "General Survey" the longest chapter is on the "Reformed Constitution." Nowhere else can the reader find in so brief a space an adequate description of the new framework of government in India. As a whole, therefore, the book is a valuable supplement to the standard books such as Ilbert's *Government of India* and Strachey's *India*. Unfortunately there is no index.

ALFRED L. P. DENNIS.

Clark University.

China: Yesterday and Today. E. T. WILLIAMS. (New York: Thomas Y. Crowell Co. 1923. Pp. xvii, 613.)

There are few Americans better qualified than Professor Williams for the task of interpreting China to America. Long residence in China, careful scholarship, familiarity with the language and literature of the country—essential as these all are—cannot prepare a writer for this undertaking unless he has absorbed much of the spirit of the East and can present, without prejudging, the divergences between East and West. In addition to residence, scholarship, and knowledge of Chinese language and literature, Professor Williams has this all-important qualification to a marked degree.

The work before us is encyclopedic rather than historical in method; ranging from the origins of the Chinese people to the Washington Conference, and from Taoism to modern trade. The historical chapters constitute only about one-third of the whole and are devoted to the forces and movements which have transformed, or are transforming the Old China into the New. The remaining chapters are given over

to the social and economic institutions of the Chinese, to their community organization and their philosophy; those age-old elements of their civilization which still, outside the treaty-ports and the railway-zones, resist the encroachments of the West.

One feature of the book will, perhaps, occasion surprise. Whereas most works descriptive of pre-revolutionary China start with the Emperor and central administration, working down through the provincial governments to the smaller political divisions, Professor Williams begins with the people and their institutions, practically ignoring the Emperor and the government at Peking. In adopting this method of treatment he has shown excellent judgment; in China, more than in any other country that we can recall, the central government has, at almost all times, been a purely incidental phenomenon, an appreciation of which fact will do much to render understandable the failures of present-day political innovations. It is to be regretted, however, that the author did not bring out, perhaps in connection with his excellent chapters on Chinese philosophy, the reasons for this unimportance of political government in the Chinese scheme of things.

A chapter which should be especially illuminating to the average reader is that on "Taoism," the too-often ignored philosophy of Lao Tzu, whose teachings in many points so anticipated the ethics of Christianity that many early missionary sinologues have endeavored to prove a connection between Lao Tzu and the religious thought of the Old Testament. Professor Williams' treatment of Lao Tzu is thoroughly sympathetic and he illustrates his discussion with many quotations decidedly superior to the available English renditions.

For the reader who has no interest in the philosophy of China, and is concerned only with the material or commercial aspects of the country, the sections dealing with China's foreign relations, and the concluding chapter on "Foreign Trade," contain much valuable information. A list of important dates in Chinese history; an extension bibliography, calculated to satisfy the widest possible divergence of taste among his readers; and an Appendix containing much useful material in compact form, complete a book which deserves a place alongside that epoch-making work of an earlier Williams,—"*The Middle Kingdom.*"

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BRIEFER NOTICES

History, its theory and practice. By Bendetto Croce. (Translated by Douglas Ainslie, Harcourt, Brace and Co., pp. 317) is a most stimulating and interesting book by one of the foremost philosophical minds of the day. Whether one agrees or not, the perusal of these pages gives ample food for reflection, The work falls into two almost equal sections: The Theory of Historiography (p. 1–164), and Concerning the History of Historiography (p. 165–314). It is a philosophical critique of history along the lines laid down in the author's *Philosophy of the Spirit.* History must be living, according to Croce: It must be contemporaneous in the sense that it appeals to our own epoch, otherwise it is a chronicle—dead history (p. 19); it must be based on such materials as can be vivified by the spirit. Universal history so-called can only be written of a period which has a universal appeal at all times, which is temporarily impossible, and it is therefore utopian (p. 59). In other words, Croce identifies philosophy and history as twin facets of the working of the human spirit. Then he connects the workings of the historical process with a dynamic, pervasive and cogent first principle, the driving impulse of men themselves, (and therefore human).

The second half of the book is devoted to a review of the historiography of earlier times, much on the lines of Fueter's book, with considerable incidental criticism of the latter author. Space does not permit elaborate comment, but the limitations of ancient historiography, the positive sides of the Christian *Weltanschauung,* and the insistence on the dependence of one period's work on that of its predecessor are excellent. The translation seems to be good in general, with an occasional roughness such as "and bear witness to the creed of positivism not otherwise than as Spencer or Haeckel in their system" (p. 178).

Sir Paul Vinogradoff has issued the second volume of his scholarly and exhaustive *Outlines of Historical Jurisprudence.* (Oxford University Press: American Branch, pp. x, 316). The present volume is entitled *The Jurisprudence of The Greek City,* and discusses such topics as the concept of law in the Greek city, the sources of law, the legal system, the government of the city, the relations between the city and the citizen, relations between cities, and the law of crimes, torts, and property. It is difficult to pick out any portion of the book which is more important than the other because the work is of such a solid and

thorough nature throughout. Of particular interest, however, are the chapters on "The Law of the Constitution" and the section on "The Rule of Law." In the former the author explains that according to Greek democratic thought supreme power was not divided into legislative, executive, and judicial functions but that the division was twofold: (1) the deliberative aspect and (2) the judicial. The magistrates or executives were regarded as definite organs of the constitution but were subordinated to the people assembled for discussion and decision. He then proceeds to analyze the way in which legislative functions were exercised and the development of the guardianship of the law through the Areopagus, ostracism, accusation for infringement of legal rules or forms of procedure and similar devices. It is also shown that the Greeks recognized the principle that *ex post facto* legislation should be prohibited. The judicial functions of the people through their democratic tribunals also receive consideration. In the section on "The Rule of Law," Vinogradoff points out that "the exercise by the magistrates of their powers as determined by law was carefully watched. The position of the magistrates was entirely different from what it was in Rome, where the magistrate's authority was based upon his *imperium*. In Greece, the principle was rather to put the magistrates in such a position that they should always be subject to the superior authority of the community."

The Story of Utopias (Boni and Liveright, pp. xii, 315) by Lewis Mumford is an exceptionally keen analysis and interpretation of the numerous utopias that have been proposed, both the well known and the obscure. The author starts with Plato's *Republic* and carries the reader through the utopias of Sir Thomas More, Johann Valentin Andreae, Campanella, Francis Bacon, Fourier, James Buckingham, Thomas Spence, Theodor Hertzka, Étienne Cabet, Edward Bellamy, W. H. Hudson, H. G. Wells and others. The significant ideas of each writer are presented in an interesting manner, and it is the author's thesis that man lives in two worlds—the world of ideas and the external world and that "the world within men's heads has undergone transformations which have disintegrated material things with the power and rapidity of radium." It is also his belief that too much attention has been given to the impracticability of the various utopias, and he expresses the opinion that, while any particular utopia as a whole may be regarded as impracticable, each one has certain features which might be applied with success to the modern community. There is

an introduction by Hendrik Van Loon and a useful bibliography of utopias and books about their authors.

Professor Edward M. East's volume on *Mankind at the Crossroads* (Scribner's, pp. 360) deals with the general problems of population and the food supply. It is the work of a scientist who undertakes to prove that the world is not far from its maximum sustainable population. His study convinces him that the world cannot subsist more than one person for every two-and-a-half acres. This would mean a maximum of about five billions, and at the present rate of increase such a figure would be reached in a little more than a century. So "the facts of population growth and the facts of agricultural economics point severally to the definite conclusion that the world confronts the fulfilment of the Malthusian prediction here and now." The entire problem, in all its bearings, is investigated thoroughly by the use of the scientist's methods,—"without suppression or evasion," the author assures us. The student of sociology and of economics will discover, nevertheless, that there are some important things which Professor East has not adequately taken into his reckonings. Anyhow, the author is not an optimist nor has he much use for those who are. "In the army" he says, "the man who carries on without any foresight whatsoever is courtmartialed: in civil life we call him an optimist and elect him mayor." The book is admirably written, in a style which may well provoke the envy of even the Mencken school.

The Far Eastern Republic of Siberia by Henry Kittredge Norton (Henry Holt and Co., pp. 311) is a careful and thorough study of the history, government and problems of one of the most interesting of the new states, which has subsequently lost its independent existence by merger with Russia. Although the republic was formed under Bolshevik influence and support and as a buffer state to Soviet Russia, communism was rejected. The constitution provides that the ownership of all lands and natural resources shall be vested in the state, but those who occupy the land are guaranteed all buildings, improvements, and produce. Provision is made for a unicameral legislative body, elected under a system of proportional representation, and for an executive which is a combination of the British, Swiss, and American types. In the first place there is a body of seven men called the "Government," elected by the National Assembly for two years, the chairman of which is the nominal head of the republic. This body appoints and dis-

misses all ministers, has the authority to issue provisional laws when the assembly is not in session, may suspend or annul all orders of the ministers that are deemed unconstitutional and exercises a suspensory veto over acts of the assembly. Once elected the "Government" cannot be recalled by the assembly. The second important organization is the council of ministers appointed by the "Government" but responsible to the assembly. The "Government" and ministers acting together constitute a body for considering general policies which corresponds roughly to the American cabinet. There are detailed provisions regarding local government, economic and financial matters; the rights of racial minorities are guaranteed; and there is a unique provision setting up popular law courts presided over in part by citizens drawn by lot. The leader in the formation of the new republic was Krasnoschekoff who spent a number of years in America under the name of Tobinson, and who holds a degree from the University of Chicago.

Sir George Buchanan, the British ambassador to Petrograd from 1910 to 1918, has written of his experiences in two volumes entitled *My Mission to Russia and Other Diplomatic Memories.* (Little, Brown & Co., pp. xvi, 253; viii, 280). The first part of the work tells of Sir George's early diplomatic career in Japan, Austria, Germany and Bulgaria, and his service as British agent to the Venezuela Arbitration Tribunal in 1899. It is the author's belief that had the Venezuela case "been tried by an impartial court of justice, that would have decided it in the light of the evidence laid before it, the whole of the territory in dispute would in all probability have been awarded" to the British. The bulk of the two volumes, however, deals with the experiences of the author in Russia in the narration of which he shows a sympathetic attitude toward Russia and her people. He affirms the fact that M. Sazonoff left no stone unturned in his efforts to avoid a rupture with Germany following the presentation of the Austrian ultimatum at Belgrade, and refutes the charges that Russia wanted war and that England egged her on by promising armed support. Czar Nicholas is appraised as a true and loyal ally who had his country's best interests at heart in spite of appearances to the contrary. The Empress is blamed, however, as instrumental in bringing about the final catastrophe. Sir George also brands as false the rumors that he had helped to promote the Russian Revolution. The book is written in a vigorous and interesting manner and ranks among the valuable

materials covering English diplomatic policy since 1900, the inner workings of Russian diplomacy, the history of Russia's participation in the Great War and her subsequent collapse.

Dr. Herbert Adams Gibbons has added to his other books on international questions a new volume entitled *Europe Since 1918* (Century Company, pp. 622). Its thirty chapters deal with events from the autumn of 1918 to the autumn of 1923,—a quinquennial so thickly studded with important happenings that even six hundred pages hardly suffice to include mention of them all. The author declares that he has "no axe to grind or theories to champion." He is not "pro-anything." His "sole ambition has been to record what he has observed." Not all readers of the book, however, will agree that it is an exemplar of non-partisanship and neutrality. Dr. Gibbons has some very definite personal convictions as to what ought to have been and what ought not to have been,—and they are by no means concealed convictions. Be this as it may, the book gives a useful, informing, interesting survey of European politics during the past five years and brings out very effectively the multiplicity of the forces which have been at work.

Three volumes relating to the German Revolution and its aftermath have been published in the United States during the past few months. The first and most elaborate is Heinrich Ströbel's *The German Revolution and After* (Thomas Seltzer, pp. 320), which has been translated by J. H. Stenning. This volume gives a comprehensive and detailed account of political events in Germany from the fall of the old régime down to the early months of 1922, including such episodes as the Kapp *Putsch*. The author, of course, is one of the leaders of the Socialist party and writes from that orientation. Ralph H. Lutz' volume on *The German Revolution, 1918–1919* is published by the Stanford University Press (pp. 186). It deals only with the period intervening between the outbreak of the Revolution and the adoption of the Weimar Constitution, with a very brief chapter on the subsequent general election. The author, although a university teacher, was a member of the American military mission to Berlin in 1919 and hence had a good opportunity to gain information at first hand. His description of the whole affair is well-proportioned, unprejudiced and clearly written. An excellent bibliography is appended. The third volume in this field, Johannes Mattern's *Bavaria and the Reich* is printed by the Johns Hopkins Press (pp. 125). It is a study of the

conflict over the law for the protection of the Republic. The appendix contains the text of this law.

General Henry T. Allen's *Rhineland Journal* (Houghton, Mifflin Company, pp. 593) contains a good deal of material that will be highly useful to students of military government and international law. As General Allen is not only a capable administrator but a very facile writer, he has given his readers an admirable grasp of the problems which arise in a region under military occupation. Those pages of the journal which deal with his work as a "high observer" on the Rhineland High Commission are especially illuminating. The volume is one of the very best among the flood of books on post-war problems in Western Europe.

The third volume of Sir Henry Lucy's *Diary of a Journalist* has come from the press of E. P. Dutton & Company (pp. 306). It covers the years 1910–1916, and like its predecessors is made up of daily comments upon public men and public affairs, with occasional letters interspersed. Like them also it makes good reading and incidentally throws some interesting sidelights upon the activities of England during the earlier years of the World War.

Two substantial volumes of autobiography by Professor James Mavor have been issued by the press of E. P. Dutton and Company with the title *My Windows on the Street of the World* (pp. 400, 452). The author may properly call himself a citizen of the world, for he has lived and travelled in almost every part of it—always with his eyes and ears wide open. He has had the close acquaintance of many interesting men during the past sixty years, and has also enjoyed close contact with many movements of great economic or political importance. So the volumes cover a wide range in time, place and topics. It is not a mere recital of events that Professor Mavor gives, but rather a pleasing blend of recollections, observations, and opinions, all of which bear more or less directly upon things that the world accounted momentous in their day. These volumes will not be called light reading by any means, but they are far from dull, and a vein of dry humor runs through their pages. The student of British colonial policy will find them particularly informing.

The C. A. Nichols Publishing Company has issued the sixth and seventh volumes of *The New Larned History for Ready Reference, Reading, and Research* (vol. 5, Froe to Inva, pp. 3543–4446; vol. 6, Inve to Lyki, pp. 4447–5350). Of special interest to students of political science are the sections dealing with the new German constitution and the recent history of Germany, changes in administration and government of India, the new Irish constitution and government, Japanese history and government, the League of Nations, and the articles on the various American states. Any one desiring a brief account of important historical facts and recent events will find accurate and reliable data in this collection. Previous volumes have been reviewed in earlier numbers of this journal.

The Soviet Constitution by Andrew Rothstein, is published by The Labor Publishing Company, (London, pp. 142). The first part of the book contains the Soviet Constitution of July 1918 together with the amendments and additions made during the next three years. The second portion gives a description of the constitution in actual operation. The appendix contains the convention creating the Union of Socialist Soviet Republics on December 30, 1922, but does not include the subsequent enlargement and elaboration of this convention (July 6, 1923). The chief interest of the volume lies in its account of actual workings, which is, of course, a highly favorable account.

A new edition of Lord Eversley's *The Turkish Empire from 1288 to 1922* has been published by Dodd, Mead & Company (pp. 456). Four new chapters have been written by Sir Valentine Chirol, summarizing compactly and interestingly the history of Turkey during the great war down to the Mudania convention of 1922. The authors believe that in spite of the loss of Arabia and Mesopotamia, Turkey today is in some respects more firmly intrenched than ever. They attribute the revival of Turkish power after the Mudros armistice to the failure of the Allies to disarm Turkey at the end of the war, and to the withdrawal of the British troops from Turkey, which gave the French, Italian and Greek troops who remained, an opportunity for intrigue. Mustapha Kemal's revolution is regarded as more important than the Young Turk revolution of 1908. But the authors doubt whether "democracy" in Turkey will mean more than "a new form of despotism as ruthless as the old, though wielded, not by a single autocrat, but by a chance oligarchy of masterful adventurers."

The Rebirth of Turkey by Clair Price (Thomas Seltzer, pp. 234) is a story of recent events in the Ottoman area, accompanied by a good preliminary survey of the years preceding the War. The author has derived most of his material from direct contact with the men and movements about which he writes. He writes clearly and with a good sense of proportion.

Arthur G. Enock's *Problems of Armaments* (Macmillan, pp. 196) is declared to be "a book for every citizen of every country." It contains a great deal of data concerning present-day armaments, military, naval and aerial. There is a good chapter on chemicals and gas warfare. The latter portion of the book is devoted to a discussion of the possibilities of disarmament. The serious difficulties of any such achievement are indicated. The appendices contain some valuable tables showing the military expenditures and war debts of the great nations at various dates.

Bearing the title *The Prevention of War*, six lectures, delivered by Messrs. Philip Kerr and Lionel Curtis at the Williams College Institute of Politics, have been issued by the Yale University Press (pp. 170). For the student of political science the most valuable among these lectures, perhaps, are the two which describe the present governments of South Africa and India.

Woodrow Wilson's Case for the League of Nations (Princeton University Press, pp. 271) is a compilation of the ex-President's arguments for the League, arranged with his approval by Hamilton Foley. It consists of explanations made to the foreign relations committee of the Senate and of speeches made to the people. To these are appended two addresses delivered in Paris, together with the Covenant of the League and some other documents.

A third edition of Professor Simkhovitch's *Marxism versus Socialism* has been issued by the Columbia University Press (pp. 298). There are some excellent chapters in this book, as readers of the earlier editions will recall, but it is unfortunate that the figures have not been brought down to date. This is particularly true of the interesting chapter "Concerning the Disappearance of the Middle Class" where the war and its aftermath have made great changes in the situation since the first edition of Professor Simkhovitch's book appeared, ten years ago.

An English translation of Odon Por's *Fascism* has been issued by Alfred A. Knopf (pp. 270). The volume traces the origin and growth of Fascism, explains its motives and tendencies, compares it with Bolshevism, and gives an interpretation of the whole movement. The translating is well done and some valuable appendices (including the program of the National Fascist Party) are added.

Origins of Democracy by John Herbert Greusel aims to treat of social evolution by tracing the rise of the common man from the Stone Age to modern times. Five volumes are planned by the author. The first of these dealing with the common man in antiquity (pp. 336) has recently been published by the Times-Mirror Press of Los Angeles. The sum total of the study so far is that the common man was in slavery throughout most of the early period but that the teachings of certain philosophers like Aristotle, revived in a subsequent age, "helped to provide the gunpowder that many centuries later blew up the Bastile."

Freedom of the Mind in History by Henry Osborn Taylor (Macmillan, pp. 297) is a volume devoted to explaining the part played by the free agency of the human mind in the progress of civilization. Many books of history have been written to demonstrate the influence of geography and other material forces upon the growth and fate of nations. Mr. Taylor, by way of counterpoise, emphasizes what has been done to the human equation. Impulse, reason, and human ingenuity are given their share of the credit, while "the moving will of God is assumed to comprehend and guide the whole."

Most of the papers in *Freedom and Growth and Other Essays*, by Edmond Holmes (E. P. Dutton & Co., pp. vii, 312), deal with educational and religious subjects. Two of the essays, however, touch upon political matters. In "The Real Basis of Democracy" and the leading essay on "Freedom and Growth" the author holds that "education seems to be at open war" with the ideas of democracy and makes a plea for a reform in education "in the direction of relaxing unnecessary pressure, removing unnecessary restrictions and, in general, giving the child space to grow in."

The Control of the Social Mind by Arland D. Weeks (D. Appleton and Company, pp. 263) deals in part with the "psychology of political relations," a topic which is now receiving more and more attention

from students of government. There is an interesting chapter on "The Psychology of Public Business," for example, and another on "Available Civic Energy." The other chapters also contain a good deal of discussion relating to political topics and tendencies. A simple method of presentation and a clear style of writing lend value to the book.

An Introduction to Reflective Thinking (Houghton Mifflin Company, pp. 351) contains thirteen chapters written by nine members of the department of philosophy at Columbia. Each chapter seeks to indicate the characteristics of effective thinking, and to clarify some of the methods of investigation in various subjects of the college curriculum. The chapter on "Reflective Thinking in Law" is of especial interest.

Race and National Solidarity, by Charles C. Josey (Scribner's, pp. 227) is a sustained argument for the domination of the earth by the white races. He does not take much stock in ideals of universal brotherhood, believing them to be ethically unsound and incapable of realization. White domination, he contends, would be a moral as well as a material gain for the world and the white races should, therefore, avow such an aim. The author writes in good temper, is actuated by no unreasoning prejudices, and makes out what many readers will regard as a strong case.

Government in Illinois, by W. F. and S. H. Dodd, (University of Chicago Press, pp. xix, 479), although somewhat elementary in treatment, is one of the best books available on its subject, and it is to be wished that every state government were described with equal thoroughness. It is well supplied with cuts, charts, and documents and will appeal to the general reader. A few criticisms, however, may be made. The arrangement involves a certain amount of duplication. Thus, the topic of the relation of the state and the nation is treated both in Chapter II and in Chapter XVII. Only about one-twentieth of the book is devoted to the state executive department, which seems a disproportionately small amount of space for this important topic. At times, there is a tendency to rely too much upon a mere summary of the statute relating to a particular matter, without noticing its actual operation. Thus, on pp. 244–5 a summary is given of the civil service statute relating to municipalities, but no inkling is given as to to what

extent the statute has been adopted, or as to how it has worked in practice.

Responsible Citizenship, by Arthur B. Mavity and Nancy B. Mavity (Benjamin H. Sanborn & Company, pp. 424) is a school textbook of a new and interesting type. Devoting relatively little attention to the machinery and activities of government, it lays the main emphasis upon the underlying principles and ideals of American government. The general arrangement of the chapters, indeed, is much like that followed in Professor Holcombe's *Foundations of the Modern Commonwealth*, although the authors could not have been influenced by this volume. There are chapters on such topics as "Equality," "Liberty," "The Pursuit of Happiness," "Justice" and "Domestic Tranquillity." The book is written in a simple, direct style, and there are brief but well-chosen lists of references at the close of each chapter. It will serve a very good purpose as a school text and indicates a drift in the right direction.

Education for Citizenship in a Democracy by Frederic P. Woellner (Scribner's, pp. 252) is intended as a "text-book for teachers" in the elementary schools. As such it will prove a useful volume, for it brings together a great deal of material that teachers of civics and allied subjects ought to have at their command. It is also replete with worthwhile suggestions and does not assume a dogmatic attitude on any question of teaching method. Quotations from a great many books, reports and magazine articles are included, most of them well-chosen, but the lists of references could be somewhat improved. The author speaks of the *Outline* which was prepared by a committee of the American Political Science Association and published in this REVIEW (February, 1922) as "comprehensive, systematic and sound." He commends it to the attention of any high school that contemplates a reorganization of its instruction in the social sciences.

Harcourt, Brace & Company have also issued a volume on *Citizenship* (pp. 470) by Ella Cannon Levis. The novel feature of this book is that it deals almost entirely with topics of municipal administration, —health, work, public recreation, poor relief, police and fire protection, housing, water supply, public lighting, waste disposal, city planning, street railways, etc. These are the titles of the successive chapters. All of them contain a varied assortment of information, much of it

loosely strung together and not all of it accurate. The author's description of a filtration bed (pp. 161–162) is amusing. For use in the high schools of large cities the conception of this book is sound and despite its incidental shortcomings it will undoubtedly prove serviceable.

Grace A. Turkington's *Community Civics* (Ginn & Company, pp. 560) is a textbook of a very different sort. A single chapter, out of twenty-two in all, is entitled "Something about the Organization called Government," and three other chapters deal with certain governmental functions, notably voting and taxpaying. The rest of the book is concerned with such topics as "Making America Beautiful," "Where Youth Dwells" and "Learning after School Days are Over." The last-named chapter might well have been entitled "How to Avoid being Buncoed" for it contains much good advice along that line, with some concrete illustrations. Miss Turkington's book is interestingly written. There are problems and exercises at the close of each chapter.

Another recent school textbook on civics deserves mention. A volume by R. O. Hughes, whose work in this field is already well and favorably known, is entitled *A Text Book in Citizenship* (Allyn and Bacon, pp. 748). The author expresses in the "Foreword" his belief that "reformers have gone too far in getting away from the study of formal government." His present book accordingly devotes a third of its chapters to a description of governmental organization and agencies. The earlier portion of the volume deals mainly with the topics covered in the author's previous textbooks.

The Macmillan Company has brought out new editions of two serviceable college texts, namely Colonel Lucius H. Holt's *Elementary Principles of Modern Government* (pp. 576) and Professor James T. Young's *New American Government and its Work* (pp. 743). Both have been entirely rewritten and brought down to date. Both have also been notably improved in substance and in style. Each sets a high standard in its own field.

Professor Robert Livingston Schuyler's *Constitution of the United States* (Macmillan, pp. 211) contains the substance of lectures which the author delivered in England during the summer of 1921. They deal with the Confederation and with the framing and adoption of the

federal Constitution. The author's principal thesis is that the Constitution does not embody, in the main, a series of compromises but a series of agreements. All the latest and best materials relating to the subject have been explored and the results are put into very readable form.

We and Our History by Professor Albert Bushnell Hart (pp. 319) is the newest volume in the series of textbooks for the social sciences issued under the auspices of the American Viewpoint Society. The book includes an analysis of the Constitution of the United States and is profusely illustrated throughout.

A lecture on *The Constitution of the United States: Its Origin and Distinctive Features*, delivered by former Senator Theodore E. Burton at the University of Rochester, has been published by the Yale University Press (pp. 51).

The lectures delivered in England last spring by Dr. Nicholas Murray Butler have been published under the title *Building the American Nation* (Scribner's, pp. 375). The lectures deal chiefly with a series of outstanding historical figures—Samuel Adams, Franklin, Washington, Hamilton, Jefferson, Madison, Marshall, Webster, Jackson and Lincoln, ending with a discussion of "Fifty Years of Growth and Change."

Edward E. Whiting's biography of *President Coolidge* (Atlantic Monthly Press, pp. 208) is announced as a "book of first aid toward the solution of a public enigma." As such it is helpful. The author is a Boston journalist whose equipment for his task will not be questioned by anyone who knows him. The biography is enlightening and sympathetic but it is not of the fulsome type. It tells the truth—at any rate as much of the truth as any prudent biographer dares to tell. Mr. Whiting is a good-humored philosopher with respect to politics and politicians in general, and he writes as becometh a successful journalist.

Another short biography of President Coolidge, by Robert M. Washburn, has come from the press of Small, Maynard & Company (pp. 150). It is a highly eulogistic sketch but brimful of wit and makes good reading.

RECENT PUBLICATIONS OF POLITICAL INTEREST

BOOKS AND PERIODICALS

CLARENCE A. BERDAHL

University of Illinois

AMERICAN GOVERNMENT AND PUBLIC LAW

Books

Asher, Cash, ed. He was "just folks;" the life and character of Warren Gamaliel Harding as mirrored in the tributes of the American press. Pp. 200. Chicago, Laird & Lee.

Barth, Harry Alden. Financial control in the states with emphasis on control by the governor. Philadelphia, Westbrook Pub. Co.

Benson, Allan M. The new Henry Ford. Pp. 360. N. Y., Funk & Wagnalls.

Briggs, John E., and *Van Ek, Jacob*, comps. The legislation of the fortieth general assembly of Iowa. Pp. 192. Iowa City, State Hist. Soc. of Iowa.

Brooks, Robert C. Political parties and electoral problems. N. Y., Harper's.

Burnett, Edmund C., ed. Letters of members of the continental congress. Vol. II, July 5, 1776 to December 31, 1777. Pp. lxxiii + 638. Washington, Carnegie Institution.

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Cowan, Leonard L. Manual of securities laws of the United States. Pp. v + 1171. Chicago, Corporation Maintenance & Service Co.

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Esarey, Logan, ed. Governors' messages and letters. Vol. II. Pp. xxxix + 772. Indianapolis, Ind. Hist. Commission.

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Fuess, Claude M. The life of Caleb Cushing. 2 vols. N. Y., Harcourt.

Fuller, Raymond G. Child labor and the constitution. N. Y., Crowell.

Handbook of the United States tariff. Pp. xi + 891. N. Y., F. B. Vandegrift.

Harriman, Mrs. J. Borden. From pinafores to politics. Pp. 359. N. Y., Holt.

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Hibbett, C. T. Autobiography of John Barleycorn. Boston, Stratford Co.

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